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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

APRIL TERM, 1941

No. 8007

DISTRICT OF COLUMBIA, *Petitioner,*

v.

ELIZABETH C. PACE, *Respondent.*

Petition for Revew of Decision of the Board of Tax Appeals for the District of Columbia

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APPENDIX TO BRIEF FOR PETITIONER

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1 *Docket Entries*

March 1, 1942	Case remanded by Court of Appeals; Hearing set for March 16, 1942.
March 13, 1942	Hearing changed to March 13, 1942; Hearing; Stipulation filed—To use former testimony.
March 25, 1942	Memorandum Opinion and Decision.
April 22, 1942	Petition for review filed by Petitioner.
May 21, 1942	Designation of Record and Motion to Modify Designation of Record: Filed

2

Endorsed: Received and filed Mar 25 1942 Board of Tax Appeals for the District of Columbia

Opinion No. 328

Board of Tax Appeals for the District of Columbia

Docket No. 456

ELIZABETH C. PACE, *Petitioner*,

v.

DISTRICT OF COLUMBIA, *Respondent*.

Memorandum Opinion

This proceeding originally came before the Board on the petition filed herein, and after a hearing thereon the Board held that on the authority of Sweeney v. District of Columbia, 113 F(2) 25 (cer. denied 310 U. S. 631) that the decedent, Charles F. Pace, was not domiciled in the District of Columbia at the time of his death, and that the inheritance tax here involved was, for that reason, invalid, and was erroneously collected from the petitioner. From such decision the District of Columbia appealed to the United States Court of Appeals for the District of Columbia. Before such appeal was heard by the Court of Appeals, the Supreme Court of the United States decided District of Columbia v. Murphy, and Same v. DeHart, 314 U. S. 441. The District of Columbia thereupon filed a motion in the Court of Appeals that the cause be remanded to the Board to be reconsidered in the light of the decision of the Supreme Court in the Murphy and DeHarte cases. Such motion was granted and there was entered by the Court of Appeals the order following:

"It is now ordered and adjudged by this Court that this case be, and it is hereby, remanded to the Board of Tax Appeals for the District of Columbia for further proceeding in conformity with the opinion of the Supreme Court of the United States in No. 58, October Term, 1941, District

of Columbia v. Murphy, and No. 59, October Term, 1941, District of Columbia v. DeHart, decided December 15, 1941."

3 The Mandate of the Court of Appeals to the Board, containing the above order was filed with the Board on March 1, 1942.

On March 13, 1942, the parties to this proceeding filed with the Board the stipulation following:

"It is hereby stipulated that the evidence adduced at the original hearing in the above entitled proceeding shall be considered as the evidence on rehearing in accordance with the mandate of the Court of Appeals without further testimony."

Before the Board could reconsider the testimony adduced at the original hearing in the light of the decision of the Supreme Court in the Murphy and DeHart cases, to wit, on March 16, 1942, the Court of Appeals rendered its decision Beedy v. District of Columbia, ... App. D. C. ..., in which decision the Court of Appeals interpreted the decision of the Supreme Court in the cases just mentioned.

The Board has now reconsidered the evidence adduced at the original hearing, and after such reconsideration the Board adopts as its Findings of Fact on rehearing, the Findings of Fact made in respect of the original hearing, with the exceptions following.

The evidence adduced has not, in the mind of the Board, produced the belief that the decedent during his residence in the District of Columbia always had a fixed and definite intent to return and take up his home in Florida when he should have been separated from the Federal service, and for that reason the Board cannot find that the decedent has overcome the presumption, arising from his maintaining a home in the District, that he was domiciled therein.

The Supreme Court in Murphy v. District of Columbia, and DeHart v. District of Columbia, 314 U. S. 441, said that persons are domiciled in the District of Columbia who live here and have no fixed and definite intent to return

and make their home where they formerly domiciled. "The place where a man lives," said the Supreme Court, "is properly taken to be his domicile until facts adduced establish the contrary". And later the Court laid down the general rule:

4 "In order to retain his former domicile, one who comes to the District to enter Government service must always have a fixed and definite intent to return and take up his home there when separated from the service. A mere sentimental attachment will not hold the old domicile. And residence in the District with a nearly equal readiness to go back where one came from or to any other community offering advantages upon the termination of service is not enough."

The Board, therefore, believes that at the time of his death the decedent, Charles F. Pace, was domiciled in the District of Columbia. For that reason the Board holds that the inheritance tax here involved was not erroneously collected by the District of Columbia from the petitioner, and that the petitioner is not entitled to any refund on account thereof.

Decision will be entered for the respondent.

JO. V. MORGAN,
Member Sole

March 25, 1942

5 Endorsed: Received and filed Apr 22 1942 Board of Tax Appeals for the District of Columbia

United States Court of Appeals for the District of Columbia Filed Jun 1-1942 Joseph W. Stewart Clerk

Board of Tax Appeals for the District of Columbia

Docket No. 456

ELIZABETH C. PACE, *Petitioner*,

v.

DISTRICT OF COLUMBIA, *Respondent*.

Petition of Elizabeth C. Pace, taxpayer, for review by the United States Court of Appeals for the District of Columbia of the Memorandum Opinion, No. 328, of the Board of Tax Appeals for the District of Columbia.

Elizabeth C. Pace, Taxpayer, the petitioner in this cause, by George H. Happ, Elmer E. Hazard and George W. Thames, her attorneys, files this petition for review by the United States Court of Appeals for the District of Columbia of the Memorandum Opinion, No. 328, of the Board of Tax Appeals for the District of Columbia rendered March 25, 1942, determining that no sum as an inheritance tax on personal prouerty held jointly with Charles F. Pace, deceased, was erroneously collected by the District of Columbia from petitioner, and that petitioner is not entitled to any refund thereof.

I.

The petitioner, an individual, is a citizen of the United States, a resident of the State of Florida, temporarily residing in the District of Columbia, and is the sister of the said Charles F. Pace, deceased.

II.

(a) The controversy involves the domocile of Charles F. Pace deceased, and the validity of the assessment and collection by the assessing and collecting authorities of the District of Columbia of an inheritance tax upon the transfer of an alleged taxable portion of personal property held jointly by the petitioner and said decedent.

(b) Charles F. Pace died in the District of Columbia on March 20, 1940. In the year 1913 he journeyed from his native State of Florida, where he maintained his legal domicile, to the District of Columbia to accept a position of uncertain and indefinite tenure under the Congress of the United States, and was continuously employed by the United States Government in the District of Columbia up to the date of his death, most of said period serving as Financial Clerk for the United States Senate. Decedent was at all times from the date of his majority to the date of his death qualified to exercise the right of franchise in Bradford County, State of Florida, and did avail himself of his right to vote in all regular elections held in said County, paying all poll taxes as required by the laws of said State.

(c) The decedent, Charles F. Pace, at all times while maintaining his temporary residence in the District of Columbia displayed a pronounced interest in the community affairs of his native Town of Starke, Bradford County, State of Florida, and there maintained a warehouse wherein he stored his household effects. He extensively dealt in property holdings in the State of Florida, and kept a sizeable bank account in said State. He at no time owned real estate in the District of Columbia, but occupied rented apartments while employed by the Federal Government.

(d) The District Court of the United States for the District of Columbia, in regular proceedings duly had, Administration No. 56,643, held that the said Charles F. Pace departed this life a resident of the Town of Starke, Bradford County, State of Florida.

(e) Within the time prescribed by law the petitioner filed an inheritance tax return with the Assessor showing that at the time of his death the decedent and the petitioner were the joint owners or holders of accounts in a building and loan association and trust company, both in the District of Columbia, in the aggregate amount of $44,343.64. Thereafter, the Assessor assessed against the petitioner an

inheritance tax in the sum of $605.15 computed upon one-half of the amount of said joint accounts. On December 20, 1940, the respondent paid said tax to the Collector of Taxes of the District of Columbia under protest in writing, and appealed from said assessment to the Board of Tax Appeals.

On June 25, 1941 the Board of Tax Appeals for the District of Columbia, after proceedings duly had, rendered a decision, based upon an opinion holding that the decedent was domiciled in the State of Florida at the time of his death, adjudging and determining that the above mentioned tax was erroneously collected, and that the petitioner was entitled to a refund. The District of Columbia on
7 July 23, 1941 petitioned for a review of said decision by the United States Court of Appeals for the District of Calumbia, and the proceedings were transmitted to said Appellate Court where they were formally filed as District of Columbia, petitioner, vs. Elizabeth C. Pace, respondent, Docket No. 8007.

The Court of Appeals, upon motion and consent answer, entered a judgment on February 12, 1942, remanding said cause to the Board of Tax Appeals for the District of Columbia for further proceedings in conformity with the opinion of the Supreme Court of the United States in No. 58, October Term, District of Columbia vs. Murphy, and No. 59, October Term, District of Columbia vs. Hart, decided December 15, 1941. Upon stipulation by both parties to said proceedings that the evidence adduced at the original hearing be considered as the evidence on rehearing, the Tax Board held a rehearing in said cause on March 13, 1941, and on March 25, 1941, rendered a Memorandum Opinion, No. 328, from which petitioner herein petitions for a review.

III.

The petitioner being aggreved by the Memorandum Opinion, No. 328 of the Board of Tax Appeals for the District of Columbia, desires to obtain a review thereof by

the United States Court of Appeals for the District of Columbia.

GEORGE H. HAPP,
600 F Street N.W.,
Washington, D. C.
ELMER E. HAZARD,
Atlantic National Bank Bldg.,
Jacksonville, Fla.
GEO. W. THAMES,
Atlantic National Bank Bldg.,
Jacksonville, Fla.,
Attorneys for Petitioner.

DISTRICT OF COLUMBIA, ss:.

George H. Happ, being duly sworn, says that he is counsel of record in the foregoing cause; that as such counsel he is authorized to verify the foregoing petition for
8 review; that he has read the said petition and is familiar with the statements contained therein; and that the statements made are true to the best of his knowledge, information and belief.

GEO. H. HAPP,
Of Counsel.

Subscribed and sworn to before me this 22nd day of April, 1942.

GEORGE CANTON,
Notary Public, D. C.

My Commission expires Dec. 1, 1942.

(Seal)

9 Endorsed: Received and filed Mar 13 1942 Board of Tax Appeals for the District of Columbia.

Board of Tax Appeals for the District of Columbia

Docket No. 456

DISTRICT OF COLUMBIA, *Petitioner*,

v.

ELIZABETH C. PACE, Executrix of the Estate of Charles F. Pace, deceased, *Respondent*.

Stipulation

It is hereby stipulated that the evidence adduced at the original hearing in the above entitled proceeding shall be considered as the evidence on rehearing in accordance with the mandate of the Court of Appeals without further testimony.

GLENN SIMMON
Assistant Corporation Counsel, D. C.,
Attorney for Petitioner.
GEORGE H. HAPP,
Attorney for Respondent.

10 Endorsed: Received and Filed May 21 1942 Board of Tax Appeals for the District of Columbia

Docket No. 456

Board of Tax Appeals for the District of Columbia

ELIZABETH C. PACE, *Petitioner*,

v.

DISTRICT OF COLUMBIA, *Respondent*.

Designation of Record

To the Clerk of the Board of Tax Appeals:

The petitioner, by reference, includes in and makes a part of his t anscript of record for review by the United

States Court of Appeals for the District of Columbia the record in cause numbered 8007, January Term, 1942, before that Court, and you are hereby requested to prepare, certify and transmit to the Clerk of that Court, with reference to the petition for review heretofore filed by the petitioner in the above entitled cause, a transcript of record in the above cause, prepared and transmitted as required by law and the rules of said Court, and to include in said transcript of record the following documents or certified copies thereof, to wit:

1. The docket entries of all proceedings before the Board of Tax Appeals subsequent to February 12, 1942.

2. Memorandum Opinion of the Board of Tax Appeals, No. 328, dated March 25, 1942.

3. Petition for review, with date of filing.

4. Stipulation of evidence to be considered on rehearing by the Board of Tax Appeals in accordance with the mandate of the Court of Appeals without further testimony, with date of filing.

5. This designation of record, with Motion pertaining thereto.

GEO. H. HAPP,
Of Counsel for Petitioner.

Service of the foregoing Designation of Record acknowledged May 21, 1942.

GLENN SIMMON,
Of Counsel for Respondent.

11 Endorsed: Received and Filed May 21 1942 Board of Tax Appeals for the District of Columbia

Bd. Tax Appls. for the Dist. of Columbia

Docket No. 456

ELIZABETH C. PACE, *Petitioner*,

v.

DISTRICT OF COLUMBIA, *Respondent*.

Motion to Modify Requirements of Rules as to Designation of Record

Now comes the petitioner, and showing to the Board that this cause has heretofore been to the United States Court of Appeals for the District of Columbia in cause numbered 8007, January Term, 1942, on its docket, in which a record is on file, and that, therefore, it is unnecessary in the designation of record here to include pleadings before the Board, original findings of fact and opinion of the Board, original decision of the Board, the original transcript of testimony, statement of evidence or stipulation, but that it is sufficient for all practical purposes to include in the said record the proceedings subsequent to the coming down of the mandate of the said Court of Appeals:

Moves the Board to permit a designation of record to be filed herein which shall adopt by reference and without reproduction the entire record in said Court of Appeals in said cause numbered 8007, January Term, 1942, specifically designating, in addition thereto, only the proceedings herein subsequent to the coming down of the mandate from the said Court of Appeals, namely: The docket entries of all proceedings before the Board of Tax Appeals subsequent to February 12, 1942, the Memorandum Opinion of the Board of Tax Appeals, No. 328, dated March 25, 1942, the Petition for review, with date of filing, the Stipulation of evidence to be considered on rehearing by the Board of Tax Appeals in accordance with the mandate of the Court

of Appeals without further testimony, with date of filing, and this designation of record.

GEO. H. HAPP,
Of Counsel for Petitioner.

Acknowledgment of Service and Consent to the above Motion, May 21, 1942.

GLENN SIMMON,
Of Counsel for Respondent.

Granted: May 21, 1942
JO V. MORGAN,
Member Sole.

12 Board of Tax Appeals for the District of Columbia

Docket No. 456

ELIZABETH C. PACE, *Petitioner,*

v.

DISTRICT OF COLUMBIA, *Respondent.*

Certificate

I, PHYLLIS R. LIBERTI, Clerk of the Board of Tax Appeals for the District of Columbia, do hereby certify that the foregoing pages 1 to 13, inclusive, contain and are a true copy of the transcript of record, papers and proceedings on file and of record in my office as called for by the Designation of Record in the Petition for Review in the appeal as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the Board of Tax Appeals for the District of Columbia, this 27th day of May, 1942.

PHYLLIS R. LIBERTI,
Clerk, Board of Tax Appeals for the District of Columbia.

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 8007.

ELIZABETH C. PACE, *Petitioner*,

v.

DISTRICT OF COLUMBIA, *Respondent*.

Petition for Revew of Decision of the Board of Tax Appeals for the District of Columbia

APPENDIX TO BRIEF FOR PETITIONER

1 Endorsed: Received and Filed Mar 17 1941 Board of Tax Appeals for the District of Columbia.

Board of Tax Appeals for the District of Columbia

Docket No. 456

ELIZABETH C. PACE, 1869 Wyoming Ave. N. W., Apt. 502, Washington, D. C., *Petitioner*,

v.

DISTRICT OF COLUMBIA, *Respondent*.

Petition

The above named petitioner petitions for a cancellation of an assessment of taxes against her and for a refund of taxes paid by her under protest, and alleges as follows:

1. The petitioner, Elizabeth C. Pace, is an individual, who is temporarily residing at 1869 Wyoming Avenue North-

west, Apartment No. 502, Washington, District of Columbia.

2. The tax in controversy is a tax on personal property jointly held, with right of survivorship, by the petitioner and her late brother, Charles F. Pace, deceased, who died in the District of Columbia on March 20, 1940, but who was at the date of his death a legal resident of and domiciled in the Town of Starke, Bradford County, State of Florida, in the amount of Six Hundred and Five Dollars and Fifteen Cents ($605.15), said tax representing an inheritance tax on a one-half interest in the total of said jointly held personal property, consisting of monies on deposit, as of the date of death of the said Charles F. Pace, deceased. The said tax was assessed upon a return duly filed by the petitioner for information purposes only, and was so clearly marked, as evidenced by a copy of said return attached hereto as Exhibit "A". The date of the filing of said return was extended to November 20, 1940, by the Office of the Assessor, in writing.

3. The notice of assessment was dated December 18, 1940, mailed to George H. Happ, attorney for the petitioner
2 the same day, and the tax paid by the petitioner under protest in writing on December 20, 1940, as will appear in the copy of assessment Exhibit "B", copy of check in payment of tax Exhibit "C", and copy of letter of payment under protest Exhibit "D", all of which are attached hereto.

4. The assessment of the tax set forth on the notice of assessment is based upon the following errors:

(a) The Assessor erred in assessing the tax, against the petitioner, on personal property which had no taxable situs in the District of Columbia.

(b) The Assessor erred in assessing the tax on personal property jointly held by the petitioner and the said Charles F. Pace, deceased, in that the latter was at the date of his death a legal resident domiciled in the Town of Starke, Bradford County, State of Florida, and only temporarily

residing in the District of Columbia while employed in the public service of the United States Government.

(c) The Assessor erred in assessing the tax, against the petitioner, on personal property of a decedent not domiciled in the District of Columbia at the date of his death, and which property had not acquired a business situs within the said District of Columbia.

(d) The Assessor erred in failing to give full credence to the Order duly and regularly passed by the District Court of the United States for the District of Columbia, under date of April 29, 1940, in Administration Proceedings No. 56,643, wherein the said Court decreed that the said Charles F. Pace, deceased, departed this life a resident of the Town of Starke, Bradford County, State of Florida, and ordered that the paper-writing purporting to be the last will and testament of said decedent be transmitted to the Clerk of the County Court for Bradford County, State of Florida. A copy of said Order of Court is attached hereto as Exhibit "E".

(e) The Assessor erred in disregarding evidence duly submitted to him by the petitioner in support of the petitioner's position in opposition to his ruling, and materially bearing on the questions set forth in the above subparagraphs (a), (b), (c) and (d) of this paragraph.

3 (f) The Assessor erred in imposing the said tax in his attempt to enforce a statutory provision which, so far as it purports to bear upon a person domiciled outside the District of Columbia, is unconstitutional.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) The personal property upon which the within tax was assessed did not have a taxable situs in the District of Columbia on March 20, 1940, the date of the death of Charles F. Pace, deceased.

(b) The decedent, Charles F. Pace, deceased, was upon the date of his death, March 20, 1940, a legal resident and legally domiciled in the Town of Starke, Bradford County, State of Florida.

(c) The said Charles F. Pace, deceased, was at all times from the date of his majority to the date of his death qualified to exercise the right of franchise in Bradford County, State of Florida, and did avail himself of his right to vote in all the regular elections held in said County, paying all poll taxes as required by the laws in said State.

(d) The said Charles F. Pace, deceased, was at the said date of his death employed in the public service of the United States Government, serving as Financial Clerk of the United States Senate. In the year 1913 he journeyed from the State of Florida to the District of Columbia, to accept a position of uncertain and indefinite tenure in the Office of the Financial Clerk of the United States Senate, and continued to be employed by said Body until the above-mentioned date of his death, and maintained a temporary residence in the District of Columbia by virtue of his employment by the United States Government.

(e) The said Charles F. Pace, deceased, at all times while temporarily residing in the District of Columbia, expressed great interest in the community welfare of the Town of Starke, Florida, and maintained in said Town a warehouse wherein he stored certain of his personal property consisting of household furniture and furnishings, against the day when he would return to said Town. It was at all times said decedent's intention to return to said Town upon his retirement from service with the United States Government.

4 (f) The said Charles F. Pace, deceased, had large sums of money invested in Florida real estate, in the Counties of Bradford, Clay and Duval, both as owner and mortgagee, and regularly retained a firm of Florida attorneys in connection with his Florida property and financial transactions. He maintained a sizable bank account at all times in the State of Florida. He owned no real estate in the District of Columbia, always occupying rented apartments while employed by the United States Government in said District.

(g) The District Court of the United States for the District of Columbia, in regular proceedings had, Administra-

tion No. 56,643, passed an Order under date of April 29, 1940, transmitting the paper-writing purporting to be the last will and testament of the said Charles F. Pace, deceased, to the Clerk of the County Court for Bradford County, State of Florida, wherein it adjudged that the said decedent departed this life a resident of the Town of Starke, Bradford County, State of Florida. Administration was duly had upon said will in Bradford County, State of Florida, and ancillary administration thereon was obtained in the District of Columbia.

(h) The said Charles F. Pace, deceased, never relinquished his legal residence and legal domicile in the State of Florida.

(i) The personal property upon which the within tax was assessed did not acquire a business situs in the District of Columbia.

(j) The petitioner has paid the taxes above set forth, under protest.

Wherefore, the petitioner prays that this Board may hear the proceeding, and cancel the assessment levied against her under date of December 18, 1940, and that the Board pass an Order directing the refund to petitioner of the taxes so paid under protest.

ELIZABETH C. PACE,
Petitioner,
1869 Wyoming Ave. N. W.,
Apt. 502,
Washington, D. C.

5 GEO. H. HAPP
Oriental Building,
600 F Street N. W.,
Washington, D. C., and

HAZARD & THAMES,

By GEO. W. THAMES.
HAZARD & THOMAS,
Atlantic National Bank Building,
Jacksonville, Florida,
Attorneys for Petitioner.

DISTRICT OF COLUMBIA, *ss:*

Elizabeth C. Pace, being duly sworn, says that she is the petitioner above named; that she has read the foregoing annexed petition and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and those she believes to be true.

ELIZABETH C. PACE.

Subscribed and Sworn to before me this 17th day of March, 1941.

JAMES CONLON
Notary Public, D. C.

(Seal)

This Return made information purposes only. See hedule sheet attached

GOVERNMENT OF THE DISTRICT OF COLUMBIA

OFFICE OF THE ASSESSOR

INHERITANCE TAX RETURN

Name of decedent CHARLES P. PACE Date of death Mar. 20, 1940

Residence at time of death Town of Starke, Bradford County, State of Florida. Was decedent a U. S. citizen? Yes

	NAME	ADDRESS
Beneficiary making this return	Miss Elizabeth C. Pace. (Beneficiary herein is also sole beneficiary and executrix under will of decedent.	1869 Zoning Ave. N.W., Washington, D.C.
Personal Representative	Miss Elizabeth C. Pace (executrix)	1869 Zoning Ave. N.W., Washington, D.C.
Local Attorney	George E. Hamm.	Oriental Bldg., 600 F St. N.W., Wash. D.C.

Is a supplementary return to be filed by this beneficiary? ..... Is a separate return to be filed by the executor or administrator? .....

Relationship to the decedent of beneficiary (or beneficiaries) filing this return (state whether relationship is by blood or marriage) .....

sister of the whole blood

Did decedent leave a will? Yes Did decedent rent a safe deposit box? No If so, state location, and if held jointly with another person or persons give their names and addresses None

GENERAL INSTRUCTIONS

THIS RETURN IS TO BE FILED BY:

(1) Every person receiving property exceeding $1,000 in value from the decedent, where such property is not under the control of the personal representative (executor, administrator or collector). This includes, (a) all real estate located in the District of Columbia, WHETHER PASSING BY WILL, INHERITANCE OR BY RIGHT OF SURVIVORSHIP, (b) all jointly held bank accounts, jointly held building and loan accounts, and all other property standing in the joint names of a decedent and a survivor or survivors, and (c) all property received in contemplation of death, or transfers made or intended to take effect at death.

The beneficiary must report all items called for by Schedules A to E both inclusive. This return must be filed within six (6) months after death of decedent; provided that the beneficiary is given the option of reporting real estate, EXCEPT THAT PASSING BY RIGHT OF SURVIVORSHIP, in this return or in a supplementary return to be filed by the beneficiary within 15 months after death of decedent.

WHERE THE ESTATE IS NOT ADMINISTERED BY A PERSONAL REPRESENTATIVE, THE BENEFICIARY OR BENEFICIARIES MUST ALSO REPORT ALL OTHER PROPERTY OF THE ESTATE BY REPORTING ALL SCHEDULES.

(2) The executor, administrator or collector of every estate exceeding $1,000 in value. Such return must be filed within 15 months after death of decedent. The executor must furnish all information called for in schedules F to N, both inclusive, and schedule Q.

(3) The returns of the beneficiary and of the personal representative may be made on a single return if the return is executed by both persons and if filed within the time allowed the beneficiary by paragraph (1) above. Separate returns may be filed by the beneficiary and the personal representative if desired. Beneficiaries may file a joint return, providing the return shows clearly the value of the property each receives.

Real Estate vested by will in a trustee or trustees, shall be returned by the trustee or trustees and not by the person or persons beneficially interested therein.

The tax is payable within three (3) months after the last date for filing. Do not remit until bill is received from the Assessor.

PENALTY FOR LATE FILING IS TEN PER CENT OF THE TAX DUE and for late payment is 1% interest per month. The law also imposes additional penalties.

All VALUES in this return are the market values as of the date of death of the decedent.

Where the return includes life estates or estates for a term of years, the dates of birth of those beneficially interested in such estates must be reported in the proper detailed schedule.

The exemption to which the beneficiary is entitled may be deducted in the first return filed where the property received or to be received by such beneficiary is reported in more than one return.

The taxable portion of real or personal property held jointly or by the entireties shall be determined by dividing the value of the entire property by the number of persons in whose joint names it was held, except that jointly held bank accounts and other jointly held property put in joint names in contemplation of death by the decedent are taxable at their full value.

If the decedent died leaving a will which is admitted to probate, a copy of the same must be filed by the personal representative with his return; if not probated, the beneficiary must file a copy of the will with his return.

This return should be filed with the Office of the Assessor, Inheritance and Estate Tax Division, District Building, Washington, D. C.

In the preparation of this return the Regulations pertaining to Title V of the District of Columbia Revenue Act of 1937, as amended, should be consulted for guidance. The Regulations are adequately indexed and will be furnished by the Assessor free of charge upon request.

SUMMARY OF ATTACHED SCHEDULES

(Separate detailed schedules are to be attached to this return and marked with the schedule letters appearing in this summary. Where there is no property of the nature described in any of the schedules called for in this summary, insert the word "none" in the column reserved for the "taxable value" on this summary. If additional sheets are needed for detailed schedules, blank sheets of the same size may be used.

	TAXABLE VALUE
SCHEDULE A. REAL ESTATE (other than that to be reported under Schedule B).—List each and every parcel of real estate in the District of Columbia of which the decedent died seized or possessed, or in which he or she had any right, title or interest at the time of decedent's death, together with the market value thereof at the time of the death of the decedent. The real estate must be described by giving the lot and square number of each parcel, also the street address. Rents accrued and unpaid at the time of death of decedent must be included. Encumbrances are to be reported under Schedules O and P.	$
SCHEDULE B. REAL ESTATE HELD AS JOINT TENANTS OR AS TENANTS BY THE ENTIRETIES.—List all real estate located in the District of Columbia or any interest therein which the undersigned beneficiary and the decedent owned as joint tenants or as tenants by the entireties and which the undersigned beneficiary received or was entitled to receive from decedent by right of survivorship. Show on schedule how taxable portion of total value was determined. Describe each parcel as required under Schedule A. Also give date when property was placed in joint names. Encumbrances are to be reported under Schedules O and P.	$

GENERAL INSTRUCTIONS

THIS RETURN IS TO BE FILED BY:

(1) Every person receiving property exceeding $1,000 in value from the decedent, where such property is not under the control of the personal representative (executor, administrator or collector). This includes, (a) all real estate located in the District of Columbia, WHETHER PASSING BY WILL, INHERITANCE OR BY RIGHT OF SURVIVORSHIP, (b) all jointly held bank accounts, jointly held building and loan accounts, and all other property standing in the joint names of a decedent and a survivor or survivors, and (c) all property received in contemplation of death, or transfers made or intended to take effect at death.

The beneficiary must report all items called for by Schedules A to E both inclusive. This return must be filed within six (6) months after death of decedent; provided that the beneficiary is given the option of reporting real estate, EXCEPT THAT PASSING BY RIGHT OF SURVIVORSHIP, in this return or in a supplementary return to be filed by the beneficiary within 15 months after death of decedent.

WHERE THE ESTATE IS NOT ADMINISTERED BY A PERSONAL REPRESENTATIVE, THE BENEFICIARY OR BENEFICIARIES MUST ALSO REPORT ALL OTHER PROPERTY OF THE ESTATE BY REPORTING ALL SCHEDULES.

(2) The executor, administrator or collector of every estate exceeding $1,000 in value. Such return must be filed within 15 months after death of decedent. The executor must furnish all information called for in schedules F to N, both inclusive, and schedule Q.

(3) The return of the beneficiary and of the personal representative may be made on a single return if the return is executed by both persons and if filed within the time allowed the beneficiary by paragraph (1) above. Separate returns may be filed by the beneficiary and the personal representative if desired. Beneficiaries may file a joint return, providing the return shows clearly the value of the property each receives.

Real Estate vested by will in a trustee or trustees, shall be returned by the trustee or trustees and not by the person or persons beneficially interested therein.

The tax is payable within three (3) months after the last date for filing. Do not remit until bill is received from the Assessor.

PENALTY FOR LATE FILING IS TEN PER CENT OF THE TAX DUE, and for late payment is 1% interest per month. The law also imposes additional penalties.

ALL VALUES in this return are the market values as of the date of death of the decedent.

Where the return includes life estates or estates for a term of years, the dates of birth of those beneficially interested in such estates must be reported in the proper detailed schedule.

The exemption to which the beneficiary is entitled may be deducted in the first return filed where the property received or to be received by such beneficiary is reported in more than one return.

The taxable portion of real or personal property held jointly or by the entireties shall be determined by dividing the value of the entire property by the number of persons in whose joint names it was held, except that jointly held bank accounts and other jointly held property put in joint names in contemplation of death by the decedent are taxable at their full value.

If the decedent died leaving a will which is admitted to probate, a copy of the same must be filed by the personal representative with his return; if not probated, the beneficiary must file a copy of the will with his return.

This return should be filed with the Office of the Assessor, Inheritance and Estate Tax Division, District Building, Washington, D. C.

In the preparation of this return the Regulations pertaining to Title V of the District of Columbia Revenue Act of 1937, as amended, should be consulted for guidance. The Regulations are adequately indexed and will be furnished by the Assessor free of charge upon request.

SUMMARY OF ATTACHED SCHEDULES

(Separate detailed schedules are to be attached to this return and marked with the schedule letters appearing in this summary. Where there is no property of the nature described in any of the schedules called for in this summary, insert the word "none" in the column reserved for the "taxable value" on this summary. If additional sheets are needed for detailed schedules, blank sheets of the same size may be used.)

	TAXABLE VALUE
SCHEDULE A. REAL ESTATE (other than that to be reported under Schedule B).—List each and every parcel of real estate in the District of Columbia of which the decedent died, seized or possessed, or in which he or she had any right, title or interest at the time of decedent's death, together with the market value thereof at the time of the death of the decedent. The real estate must be described by giving the lot and square number of each parcel, also the street address. Rents accrued and unpaid at the time of death of decedent must be included. Encumbrances are to be reported under Schedules O and P.	$
SCHEDULE B. REAL ESTATE HELD AS JOINT TENANTS OR AS TENANTS BY THE ENTIRETIES.—List all real estate located in the District of Columbia or any interest therein which the undersigned beneficiary and the decedent owned as joint tenants or as tenants by the entireties and which the undersigned beneficiary received or was entitled to receive from decedent by right of survivorship. Show on schedule how taxable portion of total value was determined. Describe each parcel as required under Schedule A. Also give date when property was placed in joint names. Encumbrances are to be reported under Schedules O and P.	$
SCHEDULE C. TANGIBLE PERSONAL PROPERTY HELD AS JOINT TENANTS OR AS TENANTS BY THE ENTIRETIES.—List all tangible personal property located in the District of Columbia, or any interest therein which the undersigned beneficiary received or was entitled to receive from decedent by right of survivorship. For general description of items to be included in this Schedule and detailed information required see Schedule F. Also give date when property was placed in joint names.	$
SCHEDULE D. INTANGIBLE PERSONAL PROPERTY HELD AS JOINT TENANTS OR AS TENANTS BY THE ENTIRETIES.—List all intangible personal property or any interest therein which the undersigned beneficiary received or was entitled to receive from decedent by right of survivorship. For general description of items to be included in this Schedule and detailed information required see Schedules G, H and J. Also give date when property was placed in joint names.	$ 44,343 64
SCHEDULE E. PROPERTY TRANSFERRED BY THE DECEDENT DURING HIS LIFETIME.—List all property which the undersigned beneficiary received from the decedent during his lifetime by deed, grant, bargain, gift or sale, for which full consideration in money or money's worth was not given in any of the manners following: (a) made to take effect after death; (b) where the decedent retained during his life the use or enjoyment, or the income or the right to designate the person who would enjoy the use, possession or income of such property, or (c) MADE IN CONTEMPLATION OF DEATH. Note.—All property transferred by decedent to beneficiary without full consideration within two years prior to decedent's death must be listed, whether the undersigned considers it transferred in contemplation of death or not. CONSULT REGULATIONS FOR MORE DETAILED DESCRIPTION OF TRANSFERS TO BE LISTED IN THIS SCHEDULE.	$
SCHEDULE F. TANGIBLE PERSONAL PROPERTY.—List all undeposited money, wearing apparel, jewelry, silverware, pictures, books, works of art, household furniture, horses, carriages, automobiles, boats, and any and all other personal chattels of whatever kind or nature physically situated in the District of Columbia, or, if readily moveable temporarily without the District of Columbia at the time of the death of the decedent, and in which the decedent, at the time of his death had any right, title or interest.	$
SCHEDULE G. STOCKS AND BONDS.—Stocks should indicate number of shares, whether common or preferred, issue, par value, price per share, and exact name of corporation. Bonds should include quantity and denomination, name of obligor, kind of bond, date of maturity, interest rate, and interest payment dates. State the exchange upon which listed, or if unlisted, the principal business office of the company. Listed stocks and bonds should be valued at the mean between the highest and lowest selling prices on the date of death, or if there were no sales on such date, then at the mean between the highest and lowest sales on the nearest date thereto, if within a reasonable period. If the date of death is on a Sunday or holiday, the quotations of the nearest previous day should be used. If listed on several exchanges, quotations of the principal exchange should be employed. Unlisted securities which are dealt in actively by brokers or have an active market should be valued at the	

EXHIBIT A

sale price as of the date of death or the nearest date thereto, if within a reasonable period either before or after such date. Only sales in a normal course of business should be employed. If sale prices are not available and the stock is quoted on a bid and asked basis, the mean of the bid and asked prices on the date of death, or the nearest date thereto, where not quoted as of such date, should be taken.

Inactive stock and stock in close corporations should be valued on the basis of the company's net worth, earning and dividend paying capacity, and all relevant factors bearing on the value of the stock. Complete financial and other data upon which the valuation is based should be submitted with the return, including balance sheet as near to date of death as possible, and a statement of the net earnings or operating results and dividends paid for each of the five years immediately preceding such date.

Securities returned as of no value, nominal value or obsolete, should be listed last, and the address of the company and the State and date of the incorporation should be stated. Correspondence or statements used as the basis for return at no value should be submitted with the schedule.

Interest accrued and dividends declared but unpaid (where stock is valued ex-dividend) to the date of death must be shown separately on this Schedule.

SCHEDULE H. MORTGAGES, NOTES AND CASH ON DEPOSIT OWNED BY DECEDENT.—State (1) face value and unpaid balance, (2) date of mortgage or note, (3) date of maturity, (4) name of maker, (5) property mortgaged or collateral securing note, and (6) interest payment dates and rate of interest. Interest accrued to date of death must be shown separately on this Schedule. State name and address of bank or other depository and balance (including accrued interest) as of date of death. $

SCHEDULE I. INSURANCE (payable to the estate either directly or indirectly).—List names of insurance companies and the amount of each policy. Policies payable to a specifically named beneficiary are not taxable. $

SCHEDULE J. OTHER INTANGIBLE PROPERTY.—List all other intangible property not set forth elsewhere in this return. $

SCHEDULE K. POWERS OF APPOINTMENT.—Only property passing through the exercise or non-exercise by the decedent of a general power should be included. Ordinarily a general power is one to appoint to any person or persons in the discretion of the donee (or appointor) of the power. If the donee is required to appoint to a specified person or class of persons, the property should not be included in his gross estate. Copy of the instrument granting the power and of the instrument by which the power was exercised, must be filed with the return. Copy must be filed even though it is contended that the power was a limited one and the property passing thereunder is not returned for tax. CONSULT REGULATIONS IN PREPARING THIS SCHEDULE. $

SCHEDULE L. INTEREST IN COPARTNERSHIP OR UNINCORPORATED BUSINESS.—Where an interest in a copartnership or unincorporated business is returned, submit a statement of assets and liabilities as near to the date of death as possible. Good will must be accounted for. A statement of the net earnings for the preceding five years must also be furnished. $

SCHEDULE M. DECEDENT'S INTEREST AS HEIR OR BENEFICIARY OF THE ESTATE OF ANY DECEASED PERSON IN PROCESS OF ADMINISTRATION OR UNDISTRIBUTED.—Set forth the interest of the decedent in the estate of any deceased person, giving the name of such deceased person, date of death of such deceased person, market value of such interest, and any and all facts pertaining thereto which may be pertinent to a fair appraisal of such interest. $

SCHEDULE N. DOWER INTEREST IN REAL ESTATE NOT OWNED BY THE DECEDENT AT THE TIME OF HIS DEATH, BUT OWNED BY HIM DURING MARRIAGE AND IN WHICH HIS WIDOW IS ENTITLED TO DOWER.—List the real estate once owned by decedent during marriage, in which his widow did not relinquish dower, and which real estate the decedent conveyed before death, subject to dower of his widow. $

TOTAL ASSETS $ 44,343.64

DEDUCTIONS

SCHEDULE O. MORTGAGES, DEEDS OF TRUST AND OTHER LIENS AGAINST ABOVE REAL ESTATE AND OTHER PROPERTY INCLUDED IN FOREGOING SCHEDULES OF ASSETS.—Give the name and address of the mortgagee, payee or obligee and the date and term of the mortgage, note, or other agreement under which the indebtedness is claimed. Show the amount of the UNPAID BALANCE as of the date of death of the decedent, unpaid interest accrued to date of death, the rate of interest and date to which the interest was paid prior to the decedent's death. Describe the property on which such obligation is secured, together with a reference to the schedule letter on this return where such property is reported.

In the case of mortgages or deeds of trust, give the liber and folio of record thereof. $

SCHEDULE P. FUNERAL AND ADMINISTRATION EXPENSES AND OTHER DEBTS.—List all valid debts owed by the decedent at the time of his death (other than those secured by mortgages or other liens shown in schedule O), including funeral expenses and administration expenses. All claims should be itemized, giving names and addresses of persons to whom payable, and exact nature of the particular expense. An item may be entered for deduction though the exact amount is not known at the time, provided it is ascertainable with reasonable certainty, and will be paid. No deduction may be taken upon the basis of a vague or uncertain estimate. Preserve all vouchers and receipts for inspection.

Estate Taxes may be deducted from the value of the gross estate in reporting values for this return.

Real Estate taxes are deductible from the gross estate only to the extent of the portion of such taxes accrued to the date of death of the decedent.

Attorney's fees incident to litigation instituted by the beneficiaries as to their respective interests do not constitute a proper deduction, inasmuch as expenses of this character are properly charged against the beneficiaries personally and are not administration expenses as contemplated by the statute.

Claims for expenses or debts may not be deducted from the decedent's interest in property as joint tenant or as tenant by the entirety, except real estate taxes thereon accrued to date of death of decedent. $

TOTAL DEDUCTIONS $

SCHEDULE Q. SUMMARY OF DISTRIBUTION.—Show the name and address of each person entitled to share in the estate, his relationship (state whether by blood or by marriage) to the decedent, and the value of the share each is to receive. Deduct from each share the exemption authorized by law and show the tax assessable against the share of each beneficiary. If this is the sole return of one beneficiary entitled to receive property not under the control of a personal representative, this schedule need not be furnished. [redacted]

A COPY OF THE WILL AND ANY CODICILS THERETO (CERTIFIED AS BEING A TRUE COPY BY THE PERSON FILING THE RETURN) MUST ACCOMPANY THIS RETURN.

SCHEDULE M DECEDENT'S INTEREST AS HEIR OR BENEFICIARY OF THE ESTATE OF ANY DECEASED PERSON IN PROCESS OF ADMINISTRATION OR UNDISTRIBUTED.—Set forth the interest of the decedent in the estate of any deceased person, giving the name of such deceased person, date of death of such deceased person, market value of such interest, and any and all facts pertaining thereto which may be pertinent to a fair appraisal of such interest. $

SCHEDULE N DOWER INTEREST IN REAL ESTATE NOT OWNED BY THE DECEDENT AT THE TIME OF HIS DEATH, BUT OWNED BY HIM DURING MARRIAGE AND IN WHICH HIS WIDOW IS ENTITLED TO DOWER.—List the real estate once owned by decedent during marriage, in which his widow did not relinquish dower, and which real estate the decedent conveyed before death, subject to dower of his widow. $

TOTAL ASSETS $ 44,248 66

DEDUCTIONS

SCHEDULE O. MORTGAGES, DEEDS OF TRUST AND OTHER LIENS AGAINST ABOVE REAL ESTATE AND OTHER PROPERTY INCLUDED IN FOREGOING SCHEDULES OF ASSETS.—Give the name and address of the mortgagee, payee or obligee and the date and term of the mortgage, note, or other agreement under which the indebtedness is claimed. Show the amount of the UNPAID BALANCE as of the date of death of the decedent, unpaid interest accrued to date of death, the rate of interest and date to which the interest was paid prior to the decedent's death. Describe the property on which such obligation is secured, together with a reference to the schedule letter on this return where such property is reported.

In the case of mortgages or deeds of trust, give the liber and folio of record thereof. $

SCHEDULE P FUNERAL AND ADMINISTRATION EXPENSES AND OTHER DEBTS.—List all valid debts owed by the decedent at the time of his death (other than those secured by mortgages or other liens shown in schedule O), including funeral expenses and administration expenses. All claims should be itemized, giving names and addresses of persons to whom payable, and exact nature of the particular expense. An item may be entered for deduction though the exact amount is not known at the time, provided it is ascertainable with reasonable certainty, and will be paid. No deduction may be taken upon the basis of a vague or uncertain estimate. Preserve all vouchers and receipts for inspection.

Estate Taxes may be deducted from the value of the gross estate in reporting values for this return.

Real Estate taxes are deductible from the gross estate only to the extent of the portion of such taxes accrued to the date of death of the decedent.

Attorney's fees incident to litigation instituted by the beneficiaries as to their respective interests do not constitute a proper deduction, inasmuch as expenses of this character are properly charged against the beneficiaries personally and are not administration expenses as contemplated by the statute.

Claims for expenses or debts may not be deducted from the decedent's interest in property as joint tenant or as tenant by the entirety, except real estate taxes thereon accrued to date of death of decedent. $

TOTAL DEDUCTIONS $

SCHEDULE Q SUMMARY OF DISTRIBUTION.—Show the name and address of each person entitled to share in the estate, his relationship (state whether by blood or by marriage) to the decedent, and the value of the share each is to receive. Deduct from each share the exemption authorized by law and show the tax assessable against the share of each beneficiary. If this is the sole return of one beneficiary entitled to receive property not under the control of a personal representative, this schedule need not be furnished. [redacted]

A COPY OF THE WILL AND ANY CODICILS THERETO (CERTIFIED AS BEING A TRUE COPY BY THE PERSON FILING THE RETURN) MUST ACCOMPANY THIS RETURN.

AFFIDAVIT OF BENEFICIARIES

That I (we), ... being first duly sworn, on oath depose and say that I am (are) the person(s) who received or are entitled to receive the property listed in schedules [redacted] reported in this return, which schedules include all property of the decedent which I (we) have received or are entitled to receive of property passing from this decedent, NOT UNDER THE CONTROL OF THE PERSONAL REPRESENTATIVE, and that the values at which the property is herein reported are the true market values of such property as of the date of death of said decedent.

ELIZABETH C. PACE

Elizabeth C. Pace

SIGNATURE OF AFFIANT

Subscribed and sworn to before me this 20 day of November, 19 40.

JAMES CONLON (SEAL)

NOTARY PUBLIC, D. C.

AFFIDAVIT OF PERSONAL REPRESENTATIVE

That I (we), ... being first duly sworn, on oath depose and say that I am (we are) the ..... of the Estate of the above decedent. That I (we) have examined this return and the schedules attached hereto, and that to the best of my (our) knowledge and belief all property of every kind, nature and description constituting the decedent's estate left by the decedent at the time of his death has been included therein, and that I (we) have been unable to discover any property belonging to the estate other than that so set forth, and that no information of any other property of the decedent's estate has come to my (our) knowledge, and that all of such property has been reported at its true market value as of the date of death of the decedent, and that to the best of my (our) knowledge and belief the schedules reported by the beneficiary or beneficiaries making this joint return contain a full and true statement of all the property which said beneficiary or beneficiaries received not under the control of the personal representative and that it is valued at its true market value at the time of the death of the decedent.

SIGNATURE OF AFFIANT

Subscribed and sworn to before me this ..... day of ..... 19.....

NOTARY PUBLIC, D. C.

7 Joint Accounts:

Perpetual Building Association, Washington, D. C., Account Series 58 415. Charles F. Pace and Elizabeth C. Pace, joint owners with right of survivorship. Account opened May 20, 1932. Balance as of March 20, 1940	$22,720.33
American Security and Trust Company, Washington, D. C., Savings Account No. 27392. Miss Elizabeth C. Pace or Charles F. Pace or survivor. Account opened January 21, 1938. Balance as of March 20, 1940	20,377.52
American Security and Trust Company, Washington, D. C., Checking Account (no number). Miss Elizabth C. Pace or Charles F. Pace or survivor. Account opened January 21, 1938. Balance as of March 20, 1940	1,245.79
TOTAL of entire balances of above accounts as of March 20, 1940, date of decedent's death	$44,343.64

This return is submitted for information purposes only, as Charles F. Pace, at the time of his death, was a legal resident of and domiciled in the Town of Starke, Bradford County, State of Florida, original administration being had in said County and State.

This return does not cover any assets of said decedent's Estate.

Evidence bearing on decedent's domicile at time of death will be furnished in accordance with conversations had between Mr. J. R. Merrick, Chief, Inheritance Tax Division, District of Columbia, and George H. Happ, attorney at law, representing Miss Elizabeth C. Pace.

Name of Decedent Charles F. Pace Schedule "D"

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OFFICE OF THE ASSESSOR, DISTRICT OF COLUMBIA

INHERITANCE TAX

Washington, D. C., December 18, 1940

Estate of CHARLES F. PACE — Estate No. 6167

Tax upon share of Elizabeth C. Pace in jointly held property only — Inheritance Tax $ 605.15

Penalty $

Interest to $

Total $ 605.15

Elizabeth C. Pace
1869 Wyoming Avenue, N.W.
Washington, D.C.

PAID UNDER PROTEST

CR: 9009 Inheritance Tax

This bill payable on or before December 20, 1940

R

PAY TO THE COLLECTOR OF TAXES, D. C.

P-474-C

(When making payment return both copies to Collector)

DEC 20 1940 3 25 —CH—K 60515

PAID— Collector of Taxes, D.C.

PAID UNDER PROTEST

(M)

WASHINGTON, D.C. December 16, 1940 No.

AMERICAN SECURITY & TRUST COMPANY

FIFTEENTH STREET & PENNA. AVE. N.W.

PAY THIS CHECK IS APPLIED TO THE PAYMENT OF D.C. $ 605 15/100

TO THE ORDER OF Collector of Taxes

UNITED STATES AND DISTRICT OF COLUMBIA

SECRETARY W. A. JULIAN

605 DOLLARS 15 CENTS DOLLARS

This Tax Payment is made under PROTEST.

Estate 6167

Elizabeth C. Pace

9 *Exhibit "D"*

Law Offices

George H. Happ

Oriental Building—600 F Street N. W.

Washington, D. C.

National 0603

December 20, 1940

Collector of Taxes for the District
of Columbia,
District Building,
Washington, D. C.

Reference: Letter of J. R. Merrick, Administrator, Inheritance and Estate Taxes, dated December 18, 1940.

Sir:

Under date of December 18, 1940, a bill for inheritance tax was mailed the undersigned as attorney for Elizabeth C. Pace, levying the sum of $605.15 to be paid upon that personal property held jointly by the said Elizabeth C. Pace and Charles F. Pace, deceased, at the date of the latter's death, namely, March 20, 1940. A return, for information purposes only, setting forth the herein mentioned joint property was duly filed by Miss Pace prior to the above assessment.

Accordingly, there is forwarded herewith the check of Elizabeth C. Pace drawn upon the American Security and Trust Company, of Washington, D. C., under date of December 19, 1940, payable to the Collector of Taxes, D. C., in the sum of $605.15, to cover the amount set forth in the above tax bill.

This payment is made UNDER PROTEST, on behalf of Elizabeth C. Pace, upon the ground that Charles F. Pace,

deceased, was at the date of his death, March 20, 1940, domiciled in and a legal resident of the State of Florida, and was not then a legal resident of and domiciled in the District of Columbia, which fact has been heretofore adjudged by the Court in regular proceedings had in the District Court of the United States for the District of Columbia, in accordance with the Code of Laws for the District of Columbia, in administration proceedings No. 56,643.

Respectfully,

GEORGE H. HAPP
Attorney for Elizabeth C. Pace, individually, and for Elizabeth C. Pace, as Executrix of the Estate of Charles F. Pace, deceased

GHH/S
Enc.(2)

10 *Exhibit "E"*

District Court of the United States for the District of Columbia

Holding Probate Court

No. 56,643

In Re: The Will of Charles F. Pace, deceased.

Order to Transmit Will to Domicile

Upon consideration of the petition of Elizabeth C. Pace, filed herein the 27th day of April, 1940, and it appearing to the satisfaction of the Court that the above named decedent Charles F. Pace, deceased, departed this life a resident of the Town of Starke, Bradford County, State of Florida, it is by the Court this 29th day of April, 1940,

Ordered, that the Register of Wills be and he is hereby authorized and directed to transmit by registered mail to the Clerk of the County Court for Bradford County, State

of Florida, at Starke, Florida, the paper-writing dated the 12th day of July, 1937, filed herein, and purporting to be the last will and testament of Charles F. Pace, deceased, and it is further

Ordered, that the Register of Wills retain a certified copy of said testamentary paper for the files of his office.

ALFRED A. WHEAT.
Chief Justice.

11 Endorsed: Received and Filed Jun 26 1941 Board of Tax Appeals for the District of Columbia

Opinion No. 284

Board of Tax Appeals for the District of Columbia

Docket No. 456

ELIZABETH C. PACE, *Petitioner*,

v.

DISTRICT OF COLUMBIA, *Respondent*.

Findings of Fact and Opinion

The Assessor of the District of Columbia assessed the petitioner and the petitioner paid to the District the sum of $605.15, as an inheritance tax in relation to the estate of Charles F. Pace, deceased. The petitioner seeks refund of such sum. It is alleged by the petitioner that such tax was assessed in error in that the property transferred was intangible, and the decedent was not domiciled in the District of Columbia at the time of his death.

Findings of Fact

The petitioner is now, and since the year 1910 has been a resident of the District of Columbia. She is the sister of Charles F. Pace, deceased, who died a resident of the District of Columbia on March 20, 1940, at the age of 63 years.

At the time of his death the decedent and the petitioner were the joint owners or holders of accounts in a building

association and a trust company, both of the District of Columbia, in the aggregate amount of $44,343.64.

Within the time prescribed by law the petitioner filed an inheritance tax return with the Assessor showing the existence and ownership of the aforesaid joint accounts, but stating that such "return is submitted for information only, as Charles F. Pace, at the time of his death, was a legal resident and domiciled in the Town of Starke, Bradford County, State of Florida, original administration being had in said County and State". Thereafter, to wit, on December 18, 1940 the Assessor assessed the petitioner an inheritance tax in the sum of $605.15, computed on one-half of the amount of the said joint accounts. On December 20, 1940, the petitioner paid such tax under protest in writing. This proceeding was filed March 17, 1941.

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The petitioner and her brothers and sisters were born in Florida, wherein her family had lived for several generations. In 1910 the petitioner came to Washington to study music. She was accompanied by a sister. They took up their residence in a rooming house. At that time the decedent was employed in a bank in Florida. In 1913 he was, through the patronage of Senator Duncan U. Fletcher of Florida, appointed a clerk in the Congressional Library. Shortly thereafter he was appointed Financial Clerk of the Senate which position he held continuously until his death.

At the time of his appointment to the Federal position in 1913 the decedent sold the family homestead in Starke, Florida, and stored a quantity of furniture and household effects in a building which he then owned. He has since that date had no home or other place of residence in Florida. Upon his arrival in the District of Columbia he joined his two sisters and lived with them for about one year in a boarding house or houses. About 1914 the three of them leased an apartment in Washington and furnished it. The three of them lived together in that or other apartments in the District of Columbia until the death of one sister. After

that time the petitioner and the decedent lived together in an apartment until his death. Neither the decedent nor his sisters owned any dwelling house or any other real property in the District of Columbia.

In 1913 the decedent owned several pieces of property in Florida. From time to time thereafter he acquired several more parcels there and sold some parcels thereof. At the time of his death he owned a number of parcels of real estate in Florida of the value of approximately $30,000, and notes secured on Florida real estate of the value of several thousand dollars. Such real estate and mortgage notes were handled by his attorneys and agents in Florida. At the time of his death the decedent owned intangible assets of value in excess of $250,000, consisting of stocks and bonds, which were kept in the District of Columbia,
13 and which were handled by his bankers in the District. At that time he had substantial sums on deposit in banks in Florida and in a bank in the District of Columbia.

The decedent claimed a legal residence in Florida. On several occasions while he resided in the District of Columbia he stated, orally and in writing, that he was a "resident" of Florida; and on other occasions stated orally that he intended to return to and live in Florida when he should have resigned from his Federal employment. He paid the poll tax of Florida and voted regularly, or, at least, frequently in Florida elections. In some instances he voted by "absentee" ballot. Such ballot was accompanied by a sworn statement or affidavit that he was a "resident" of the particular voting area. The pertinent law of Florida requires in terms that a voter must "be a citizen of the United States, and shall have resided or had his or her habitation, domicile, home and place of permanent abode in Florida for one year, and in the county six months."

Shortly after the death of the decedent his will was deposited with the Register of Wills of the District of Columbia. Thereafter the petitioner herein filed a petition in

the District Court of the United States for the District of Columbia, holding a Probate Court, for the withdrawal of such will from the Probate Court and its transmittal to the County Court of Bradford County, Florida. After considering such petition and ex parte affidavits in support thereof the Probate Court granted the prayers of such petition. Thereafter the Probate Court granted ancillary letters testamentary to the petitioner as executrix of the estate of the decedent. The District of Columbia was not a party to and had no notice of either of such proceedings.

The decedent's will, dated July 12, 1937, began with statement following, "I, Charles F. Pace, of the City of Washington, District of Columbia * * *" .

Prior to the effective date of the repeal of the law authorizing the imposition of intangible personal property taxes by the District of Columbia (July 1, 1939) the decedent paid the District of Columbia intangible personal property taxes and gave his addresses as follows:

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For the year ending	Value of Intangibles	Tax	Address
June 30, 1937	$19,708	98.54	1539 Eye St. N. W.
June 30, 1938	43,508	217.54	1539 Eye St. N. W.
June 30, 1939	36,452	182.26	1851 Columbia Road

The decedent paid to the District of Columbia an income tax for the calendar year 1939 in the sum of $150.73, and gave his address as 1851 Columbia Road, Washington, D. C. No claim for refund or protest was made in respect of such intangible or inheritance taxes on the basis of domicile.

Miss Mary S. Pace, who was a sister of the decedent and the petitioner, and who resided with them during their entire residence in the District of Columbia, died on January 15, 1938. At the time of her death she held certain intangible assets jointly with her sister, the petitioner herein.

Without objection a return was filed by the petitioner in accordance with the inheritance law, and based therein the Assessor assessed the petitioner, as survivor of her sister, an inheritance tax in the amount of $200.79. Such tax was paid voluntarily and without protest on February 15, 1938. All correspondence with the office of the Assessor regarding the tax was carried on by the decedent as the "agent" for the petitioner.

The petitioner in her individual capacity filed with the Assessor an income tax return for the calendar year 1939, and paid to the District of Columbia without any protest an income tax for that year in the sum of $22.50. For the fiscal year ending June 30, 1939, the petitioner in her individual capacity filed a return of intangible personal property and paid thereon a tax of $26.08, without protest. In both returns the address of the petitioner was given as 1851 Columbia Road, Washington, D. C.

The decedent was a man of substantial financial means. His property, consisting mostly of liquid assets, was of value in excess of $300,000. His livelihood was not dependent upon his position as Financial Clerk of the Senate. Some time prior to his death he was offered employment in a bank in Florida, in which he was employed when he resided there, at a salary substantially in excess of his salary as Financial Clerk of the Senate.

After considering all of the evidence the Board finds as a fact that when the decedent, Charles F. Pace, came to reside in the District of Columbia upon accepting Federal employment in 1913 he had an intention to remain and reside in the District for an indefinite period of time, and that if he had an intention to return to his former home in Florida, such intention was floating and dependent upon his resigning his Federal employment before his death.

Opinion

The decision in this case turns on the fact of domicile of the decedent, Charles F. Pace. Since the tax here under

consideration is an inheritance and the property transferred is intangible, before the tax can be held to be valid it must appear that the decedent was domiciled in the District of Columbia at the time of his death.

The contention of he petitioner is two-fold, namely, (a) that under the recent decisions of the United States Court of Appeals concerning domicile of Federal employees the Board must hold that the decedent was not domiciled in the District of Columbia, but in Florida, and (b) that the action of the District Court of the United States for the District of Columbia, holding a Probate Court, in ordering the transmittal of the will of the decedent to Florida and in granting ancillary letters testamentary amounted to a judgment in rem or quasi in rem, binding on all parties, including the District of Columbia, not withstanding the District was not a party to the administration proceeding in which such action was taken.

The facts as found herein show that the decedent, when he came to the District of Columbia in 1913 was a free agent, that is to say, he was under no compulsion, as that term must be understood in the law of domicile. It is, of course, conceded that he was physically present in the District of Columbia. The Board has found as a fact that he had an intention to remain and make his home in the District of Columbia for an indefinite period of time, and that whatever intention he had of returning to his former home was floating, and dependent on an event which might not, and, in fact, did not occur.

If the decedent had been employed in private industry or profession and had not been a Federal employee, the Board would not hesitate to rule that he was domiciled in the District of Columbia at the time of his death.

16 Leighton v. District of Columbia, D. C. B. T. A. Docket No. 375, Beedy v. District of Columbia, D. C. B. T. A. Docket No. 353; Beaty v. District of Columbia, D. C. B. T. A. Docket No. 457. The decedent, however, was a Federal employee and claimed a legal residence in Flor-

ida and voted regularly therein. Such being the case the Board, under the decisions of the United States Court of Appeals in Sweeney v. District of Columbia, 72 App. D. C. 30, 113 F(2d) 25; District of Columbia v. Murphy, — App. D. C. —, 119 F(2d) 451 and District of Columbia v. DeHart, — App. D. C. —, 119 F(2d) 449, concludes as a matter of law that at the time of his death the decedent was not domiciled in the District of Columbia.

Because of the ruling on the first point of the petitioner it is not necessary to consider the second, and the Board expresses no opinion thereon.

It, therefore, follows that the Board must hold that the inheritance tax assessed against the petitioner in the sum of $605.15, and here under consideration was erroneously collected by the District from the petitioner, and that the petitioner is entitled to a refund thereof.

Decision will be entered for the petitioner.

JO. V. MORGAN
Member Sole

17 Endorsed: Received and Filed June 26 1941
Board of Tax Appeals for the District of Columbia

DOCKET NO. 456

ELIZABETH C. PACE, *Petitioner*,

v.

DISTRICT OF COLUMBIA, *Respondent*.

Decision

This proceeding came on to be heard upon the petition filed herein, and upon consideration thereof and of the evidence adduced at the hearing on said petition, it is by the Board this 26th day of June, 1941,

Adjudged and Determined That an inheritance tax in the sum of $605.15 was erroneously collected by the District

of Columbia from the petitioner and that the petitioner is entitled to a refund of said total sum.

JO. V. MORGAN
Member Sole

June 26, 1941

18 Endorsed: Received and Filed Jul 8 1941 Board of Tax Appeals for the District of Columbia

Opinion No. 284a

Board of Tax Appeals for the District of Columbia

Docket No. 456

Elizabeth C. Pace, *Petitioner*,

v.

District of Columbia, *Respondent*.

Revision of Findings of Fact

After the Findings of Fact in this proceeding were entered the respondent duly filed a motion to revise the findings of fact in certain respects. After consideration of such motion the Board amends and revises the Findings of Fact herein by the addition of the following:

1. The inheritance tax assessed against Elizabeth C. Pace, the petitioner herein, in relation to the estate of her sister, Mary S. Pace, in the sum of $200.79, was paid voluntarily and without protest on February 15, 1938, by the decedent, Charles F. Pace.

2. The decedent, Charles F. Pace, was the last of four brothers and sisters to remove to the District of Columbia. All of such brothers and sisters resided in the District of Columbia continuously since 1913. One of the brothers was a Catholic Priest who had studied in Rome and who lived during the period mentioned at the Catholic University where he was Vice-Rector. One brother and one sister died in 1938 and their remains, together with those of the decedent, are buried in a vault at Mount Olivet Cemetery

in the District of Columbia, for which the petitioner pays a monthly rental. The vault is the property of the cemetery. The petitioner on the witness stand stated that she intended to remove the bodies of her deceased brothers and sister some time in the future to a family burial lot in Florida.

19 3. The decedent, Charles F. Pace, regularly filed his Federal income tax return with the Collector of Internal Revenue at Baltimore. Before filing his return of income with the Assessor of the District of Columbia for District income tax purposes he discussed the matter with William E. Schooley, Assistant Vice-President of the American Security and Trust Company, Washington, D. C., who stated to the decedent that he was liable to the District of Columbia for an income tax since he had received his income in the District of Columbia. The decedent was a member of the Bar of the State of Florida.

s/ JO. V. MORGAN

July 8, 1941

20 Endorsed: Received and Filed Jul 10 1941 Board of Tax Appeals for the District of Columbia

Board of Tax Appeals for the District of Columbia

Docket No. 456

ELIZABETH C. PACE, 1869 Wyoming Ave. N. W., Apt. 502, Washington, D. C. *Petitioner*.

v.

DISTRICT OF COLUMBIA, *Respondent*.

Stipulation

1. The petitioner, Elizabeth C. Pace, and the respondent, the District of Columbia, by their respective attorneys of record, hereby stipulate that the certified photostatic copies of the original affidavits of the following persons, each of

whom is at a greater distance than 100 miles from the place of the hearing of this cause, namely,

Harold C. Wall,
D. D. Upchurch,
W. R. McQuaid,
N. D. Wainwright,
E. K. Perryman,
C. A. Knight,
Vida V. Morgan,
E. L. Matthews, and
Joseph E. Wilson,

with copies of the exhibits thereto, the originals of which accompanied Petition for transmittal of Will to domicile filed in the matter of In Re: The Estate of Charles F. Pace, deceased, Administration Proceedings No. 56,643, of the District Court of the United States for the District of Columbia, holding Probate Court, be taken and filed in the herein cause, and that the same may be read and received in evidence in this cause in the same manner as if they were the depositions of said parties regularly taken and filed under the rules applicable to the Board of Tax Appeals for the District of Columbia.

It is further stipulated that all such words appearing in said affidavits as may be obliterated or lined out thereon, are not to be read and received in evidence.

21 It is likewise stipulated that the certified photostatic copy of the original Order of Court of April 29, 1940, authorizing and directing transmittal of Will to Clerk of the County Court of Bradford County, State of Florida, at Starke, Florida, which is attached to said affidavits, be read and received in evidence in this cause.

Said affidavits and Order of Court are attached hereto, under one certificate, and are marked for identification as "Stipulation Exhibit A".

2. It is further stipulated that the following:

(a) Photostatic copy of carbon copy of letter from William R. McQuaid to Mr. Chas. F. Pace, dated November 27, 1939,

(b) Photostatic copy of original letter from Charles F. Pace to Mr. William R. McQuaid, dated Nov. 29, 1939,

(c) Original letter of William R. McQuaid to Mr. Chas. F. Pace, dated December 2, 1939, and

(d) Photostatic copy of carbon copy of letter from William R. McQuaid to Mr. Chas. F. Pace, dated December 7, 1939,

be read and received in evidence in this cause so far as they are relevant in connection with the copy of the letter from Charles F. Pace to William R. McQuaid, dated December 5, 1939, which is attached as an exhibit to the above mentioned affidavit of the said William R. McQuaid. The primary purpose of the introduction of the letters mentioned in this paragraph is to present to the Board a full and complete understanding of all facts incident to the statements contained in the said letter from Pace to McQuaid, dated December 5, 1939, and they are attached hereto, being collectively marked for identification as "Stipulation Exhibit B".

3. It is further stipulated that the following:

(a) Certified photostatic copy of the exemplified copy of the original Will of Charles F. Pace, deceased,

(b) Certified copy of the Petition of Elizabeth C. Pace for Ancillary Letters Testamentary, in the District of Columbia, under said Will, and certified photostatic copy of the original Order of Court of June 17, 1940, granting Ancillary Letters Testamentary unto Elizabeth C. Pace, both of which are included under one certificate, and

(c) Certified photostatic copy of the original Report of Appraisers filed in the matter of In Re: Estate of Charles F. Pace, deceased, in the Office of the County Judge of the County of Bradford, State of Florida, on August 14, 1940, and being recorded in Book #2 on page 51 of Public Records of said County,

be read and received in evidence in this cause, in the same manner as if regularly offered and duly received in evidence in the hearing of the same.

Said copies of Will, Petition and Order of Court, and Report of Appraisers are attached hereto, and are marked for identification as "Stipulation Exhibits C, D and E" respectively.

4. It is further stipulated that the affidavit of Elmer E. Hazard, a member of the Bar of the State of Florida, attached hereto, and marked for identification "Stipulation Exhibit F" setting forth certain provisions of the Constitution and Statutes of the State of Florida in reference to poll or capitation tax, be read and received in evidence in this cause, in proof of said provisions of said Constitution and Statutes of the State of Florida, in such manner as if said substance contained in said affidavit was regularly offered and duly proven at the hearing of this cause.

5. It is further stipulated that list of jointly held property, appearing in Exhibit A of the Petition herein, is a true and accurate record of all property held jointly by Charles F. Pace, deceased, and Elizabeth C. Pace, petitioner herein, in the District of Columbia, on March 20, 1940, the date of death of the said Charles F. Pace, and is to be read and received in evidence in this cause, in the same manner as if regularly offered and duly proven in the hearing of this cause.

6. It is further stipulated that the list of payments of tax to the Collector of Taxes for the District of Columbia attached hereto, and marked for identification as "Stipulation Exhibit "G" be read and received in evidence as a fact that such payments were made as set forth in said list, and that said list constitutes a true and accurate statement that the taxes set forth therein were so paid, in the same manner as if the facts contained therein were regularly offered and duly received in evidence in the hearing of this cause.

7. It is further stipulated that the statements contained in "Stipulation Exhibit H", likewise hereto attached,

the same being a letter from Oro Thompson, Financial Clerk of the United States Senate addressed to the Board under date of June 13, 1941, and relating to the employment of Charles F. Pace, deceased, by the United States Government in the District of Columbia, be read and received in evidence, as facts, in such manner as if the said statements were regularly offered and duly proven in the hearing of this cause. Also, that the said Oro Thompson, in his official capacity as Financial Clerk, is charged with the custody and control of the records pertaining to all personnel employed by the United States Senate.

8. It is further stipulated, as facts, that the amount of the tax stated in the Petition herein is the correct amount; that the Return upon which the assessment of said tax was made was duly filed, and contained the following notation upon it's face: "This return is submitted for information purposes only, as Charles F. Pace, at the time of his death, was a legal resident of and domiciled in the Town of Starke, Bradford County, State of Florida, original administration being had in said County and State": that the payment of said tax was made in due time under protest in writing; that said Petition was filed within ninety days of the assessment; and that the exhibits attached to said Petition are correct.

(signed) GEO. H. HAPP
Of Attorneys for Petitioner.

(signed) GLENN SIMMON
Asst. Corporation Counsel, D. C.
Of Attorneys for District of Columbia.

"Stipulation Exhibit A"

24 Apr 27 1940 Theodore Cogswell, Register of Wills, D. C., Clerk of Probate Court

"Exhibit No. 4"

STATE OF FLORIDA,
County of Leon.

Personally Appeared Before the undersigned authority Harold C. Wall, who, being first duly sworn, deposes and says: That at the present time affiant is Chairman of the Industrial Commission in and for the State of Florida; that affiant is the owner of The Harold C. Wall Agency, doing a general insurance business in the Town of Starke, Bradford County, Florida; that affiant, in said insurance business, carried and placed all fire and plate glass insurance on property owned by Charles F. Pace, in said Town of Starke, for the last past several years; that in this connection affiant frequently corresponded with the said Charles F. Pace; that in a letter written several years ago by the said Chales F. Pace to affiant, he, the said Charles F. Pace, stated that when he retired from his position as an employee of the United States Senate in the City of Washington, District of Columbia, he, the said Charles F. Pace, would return to his home in Starke, there to remain for the balance of his life; that the letter containing said statement aforesaid cannot be found by affiant, although affiant has diligently searched his files, and affiant therefore swears that same has been misplaced, lost or destroyed:

Affiant further says that for about nine and one-half years last past and prior to June 30, 1937, affiant was Supervisor of Registration of Bradford County, Florida, and that, in his capacity as such Supervisor of Registration, he had the custody and control and care of the registration books of Bradford County, Florida, and affiant knows of his own knowledge, that during all of said time that he, affiant, was Supervisor of Registration in and for Bradford County, Florida, the said Charles F. Pace was a duly quali-

fied elector and voter as shown by the registration books of said Bradford County, Florida.

Further affiant saith not.

HAROLD C. WALL

Sworn to and subscribed before me this 17th day of April, A. D. 1940.

RACHEL BARDIN

(Seal) *Notary Public, State of Floria at Large*

My Commission expires 7/7/41

25 "*Exhibit No. 2*"

STATE OF FLORIDA,
County of Duval.

Personally Appeared before the undersigned authority, D. D. Upchurch, who, being first duly sworn, deposes and says: that he is Vice-President of The Atlantic National Bank of Jacksonville, Jacksonville, Florida; that he has been connected with said bank continuously since its organization, to-wit: August 1, 1903, having been an officer thereof since year 1910; that he was personally acquainted with the late Charles F. Pace, who, at the time of his death, was Financial Secretary of the United State Senate, such acquaintance covering a period of some 40 years next preceding the death of said Charles F. Pace; that affiant has examined the record of said The Atlantic National Bank of Jacksonville and finds that said Charles F. Pace maintained an active checking account in said bank for a period of time extending from 1920 to the date of his death; that at the time of his death, to-wit: March 20, 1940, said Charles F. Pace had a substantial balance on deposit in said bank. Affiant further says that he knows of his own knowledge that said Charles F. Pace maintained a checking account in said bank for many years prior to 1920; that, in addition, said Charles F. Pace maintained a substantial balance on deposit in the savings department of said bank until ap-

proximately five years ago when he withdrew the deposit for investment purposes consequent upon the said bank's being required to reduce its payment of interest on savings deposit.

Affiant further says that he knows the said Charles F. Pace was a native of the State of Florida and maintained a great affection for his native state, this affection being shown in correspondence which affiant had with said Charles F. Pace over a long period of years; that said Charles F. Pace invested large sums of money in Florida real estate, both as owner and as mortgagee; that while said Charles F. Pace had been absent from the State of Florida for
26 a number of years prior to his death, this was occasioned by his official duties in Washington, D. C.;

D D UPCHURCH

Sworn to and subscribed before me this 11th day of April, A. D. 1940.

BESSIE LEE SLAUGHTER

(Seal) *Notary Public, State of Floria at Large*

My Commission expires Oct. 19, 1942.

27 "*Exhibit No. 3*"

STATE OF FLORIDA,
County of Duval.

Personally Appeared Before the Undersigned Authority, W. R. McQuaid, who, being first duly sworn, deposes and says: That he is President of The Barnett National Bank of Jacksonville, Jacksonville, Florida, and that he has known Charles F. Pace since 1897, and has corresponded with him continuously for the last twenty years or more; that on December 5, 1939, affiant received, through the United States mail, in an envelope addressed to affiant at his usual mailing address, to-wit: The Barnett National Bank of Jacksonville, Jacksonville, Florida, a letter from the said Charles F. Pace; that the photostat hereto attached and made a part hereof and marked Exhibit "A" is a true and accurate copy of said letter received aforesaid; that

affiant is familiar with the handwriting and signature of the said Charles F. Pace, and that the letter received aforesaid, photostat of said letter being attached hereto, was written by the said Charles F. Pace; that any declaration as to citizenship contained in said letter was made by the said Charles F. Pace freely and voluntarily and not on the advice of, or at the request of, affiant.

Further affiant saith not.

W. R. McQUAID

Sworn to and subscribed before me this 3rd day of April, A. D. 1940.

LOUISE BELLE HIGBEE

(Seal) *Notary Public, State of Florida at Large.*

My Commission expires July 21, 1942

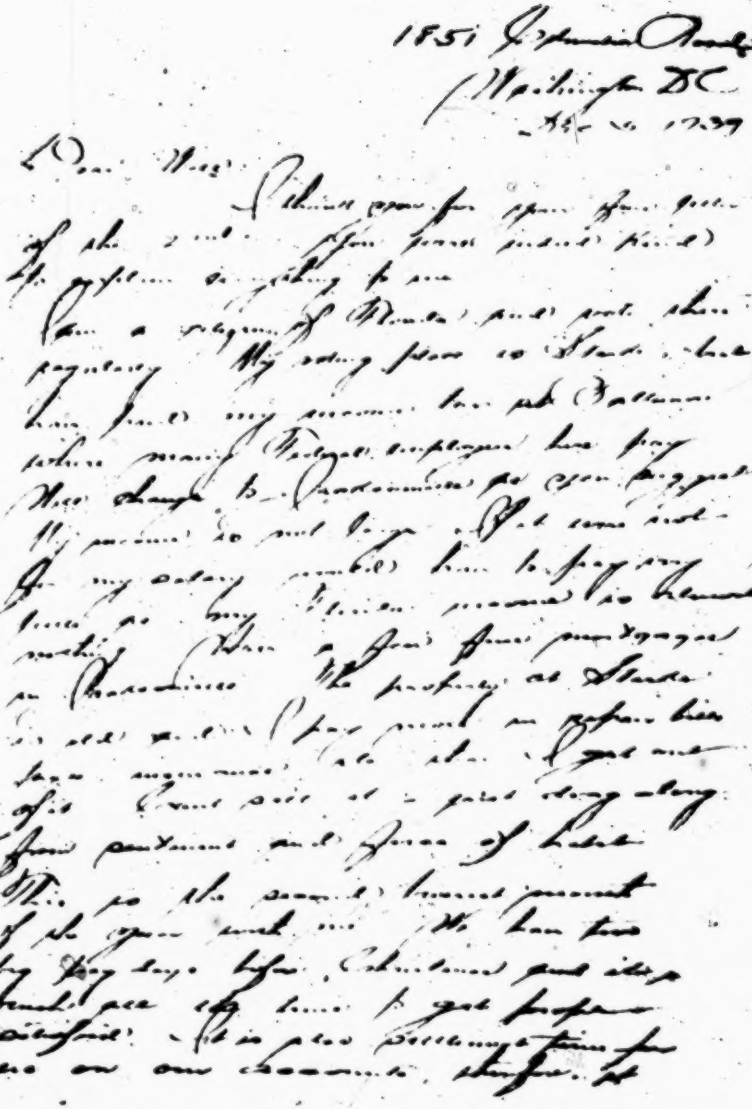

EXHIBIT "A" 1

30 *"Exhibit No. 4"*

STATE OF FLORIDA.
County of Bradford.

Personally Appeared Before the Undersigned Authority, duly qualified to administer oaths and take acknowledgments under the laws of the State of Florida, N. D. Wainwright, who, being first duly sworn, deposes and says: That he is at the time of the making of this affidavit the duly qualified and acting Supervisor of Registration, in and for Bradford County, Florida, and that in that capacity he is the official custodian of the registration books of Bradford County, Florida, which said books contain the names of all citizens of Bradford County, Florida, qualified to exercise the right of franchise in Bradford County, Florida; that he has personally known Charles F. Pace, now deceased, late of Bradford County, Florida, for more than fifty years: that he knows of his own personal knowledge, as well as his knowledge as Supervisor of Registration of said county, that the said Charles F. Pace was properly registered and qualified in and by the registration books of Bradford County, Florida, to vote at any election held in Bradford County, Florida, at the time of the death of him, the said Charles F. Pace, deceased, and that the said Charles F. Pace had been so qualified ever since becoming of voting age, some forty-four years ago; affiant further, in his official capacity aforesaid, says upon oath, that had the said Charles F. Pace, deceased, lived until, to-wit May 7th, A. D. 1940, the date fixed for the holding of the first primary election in the State of Florida, the said Charles F. Pace would have been qualified to vote thereat: Affiant further says that he knows of his own personal knowledge and also by his examination of the registration books in his custody as Supervisor of Registration of Bradford County, Florida, that the said Charles F. Pace, exercised his right of franchise by casting his ballot in elections held in Bradford

County, Florida, during the said period of time aforementioned.

Further affiant saith not.

N. D. WAINWRIGHT

Sworn to and subscribed before me this 3rd day of April, A. D. 1940.

C. A. KNIGHT

(Seal) *Notary Public*, State of Florida at Large.

My Commission expires: July 26-1941

31 *"Exhibit No. 5"*

STATE OF FLORIDA
County of Bradford

Personally Appeared Before Me, the undersigned authority, E. K. Perryman, who, first being duly sworn, deposes and says: That he is the duly qualified and acting County Judge in and for Bradford County, Florida, and that as such County Judge he is delegated by law to deliver and receive ballots cast by citizens and residents of Bradford County, Florida, who expect to be absent from said county on the days of elections; that on March 17, 1936, Charles F. Pace, now deceased, made a request for a ballot for the election to be held on June 2, 1936; that the photostat of "Affidavit of Absent Voter—Requesting Ballot" is attached hereto and made a part hereof and marked Exhibit "A" and that the said photostat is a true and accurate copy of the original "Affidavit of Absent Voter—Requesting Ballot" on file in the County Judge's Court in and for Bradford County, Florida.

That at the time of the request for ballot for the election to be held on June 2, 1936, affiant, in order to complete said record in said County Judge's Court, and to definitely determine that said Charles F. Pace was qualified to vote in said election, as County Judge, requested the Supervisor of Registration in and for Bradford County, Florida, to furnish him, affiant herein, with a copy of the Registration Certifi-

cate of said Charles F. Pace; that the said Supervisor of Registration did furnish said copy as requested and that the photostat of the copy of the Registration Certificate attached hereto and made a part hereof and marked Exhibit "B" is a true and accurate copy of said original copy of Registration Certificate on file in said County Judge's Court.

That the said Charles F. Pace voted an absentee ballot in the Primary Election held in Bradford County, Florida, on May 3, 1938; that attached hereto and made a part hereof and marked Exhibit "C" is a photostat of the original envelope that contained the ballot that said Charles F.
32 Pace cast in the Primary Election held aforesaid, upon which said envelope the said Charles F. Pace subscribed to the oath set forth thereon; that said photostat is a true and accurate copy of the said original envelope, with the oath aforesaid, on file in the County Judge's Court in and for Bradford County, Florida.

Further affiant saith not.

G. K. PERRYMAN

Sworn to and subscribed before me this 3d day of April, A. D. 1940.

C. A. KNIGHT,

(Seal) *Notary Public*, State of Florida at Large.

My Commission expires: July 26-1941.

Form 150 144

AFFIDAVIT OF ABSENT VOTER—Requesting Ballot

Chapter 14866 Acts of 1929

STATE OF FLORIDA
COUNTY OF Bradford

I, the undersigned, do hereby solemnly swear that I am a citizen of the United States, that I am a legal resident of the State of Florida and have been such for one year last past and of the County of Bradford City or Town of Starke Ward 3 of said county or municipality, that I am a qualified elector under the Laws of the State of Florida, that I have not voted in any State other than the State of Florida within the last twelve months, that I am not a registered voter in any State other than the State of Florida, that I expect to be absent from the State of Florida on the occasion of the 1st Primary June election to be held on the 2nd day of June A.D. 1936 and that I will have no opportunity to vote personally at my regular voting place on said day, that I will not attempt to do so and that my official ballot be mailed to me at Number Starke, Florida.

Sworn to and subscribed before me this 20th day of May A.D. 1936.

Clerk of the Circuit Court

Form 150 144

Commission expires June 16, 1937

EXHIBIT A

Copy

REGISTRATION CERTIFICATE

No. 208

State of Florida County of Bradford

Precinct No. 3

Date Registered 2/20/36. 19

Name Charles D Vace

Political Party Affiliation Democratic

Occupation Clerk

Age 40 Color W Sex M

Nativity USA

If born in any foreign country, state here the place, court and date of naturalization

Residence

Freeholder?

This registration is made in accordance with the laws of the State of Florida

C. L. Dutton
Supervisor of Registration.

By

Deputy

EXHIBIT B

STATE OF District of Columbia

COUNTY OF [illegible]

I, the undersigned, do hereby solemnly swear that I am a citizen of the United States; that I am a legal resident of the State of Florida and have been such for one year last past and of the County of Bradford City or Town of _____ for six months last past; that I am a duly qualified voter in precinct or ward number 3 of said county or municipality; that I am a qualified elector under the Laws of the State of Florida; that I expect to be absent from the State of Florida on the occasion of the Primary election to be held in Florida on the 5th day of May A. D. 1942 that I will have no opportunity to vote thereat personally and will not attempt to do so; that I have not voted in any State other than the State of Florida during the past twelve months, that I am not a registered voter in any State other than the State of Florida.

James D. Pace
Elector

Subscribed and sworn to before me this 3rd day of April A. D. 1942.

Isaac N. Fox
NOTARY PUBLIC, D. C.
My commission expires Jan 23, 1942

(This Affidavit must be executed, and with ballot returned herein by registered mail to the County Judge, Starke, Florida.)

COUNTY JUDGE

STARKE, FLORIDA

123337

REGISTERED NO. 123337

The Ballot of Charles F. Pace

an absent voter of precinct No. [illegible]
of Bradford County, Florida

Charles F. Pace
Elector

[illegible] County Judge

EXHIBIT "C" 2

36 *"Exhibit No. 6"*

STATE OF FLORIDA,
County of Bradford.

Personally appeared before the undersigned authority, C. A. Knight, who, being first duly sworn, makes oath and says: That he is presently the duly qualified and acting Tax Collector of Bradford County, Florida; that he has resided in the Town of Starke, Bradford County, Florida, for 55 years last past; that he personally knew the late Charles F. Pace, for more than 30 years next prior to March 20, 1940; that affiant was the duly qualified and acting Supervisor of Registration for Bradford County, Florida, on, to-wit: February 20, 1914; that pursuant to a statute enacted by the 1913 Florida Legislature, affiant, in his capacity as Supervisor of Registration, through C. A. Futch, his duly authorized deputy, registered the said Charles F. Pace as a duly qualified voter in Election District #3 of Bradford County, Florida; that said registration, pursuant to said statute was permanent, that is to say, reregistration of the voter was not required; that affiant has examined the current registration books of Bradford County, Florida, and finds that, at the time of his death, the said Charles F. Pace was a duly qualified voter of Bradford County, Florida.

Affiant further says that during the year 1936 affiant was engaged in a campaign for renomination as the Democratic candidate for Tax Collector of Bradford County, Florida; that to that end affiant wrote the said Charles F. Pace soliciting his vote; that in response thereto the said Charles F. Pace wrote affiant a most complimentary letter in which he, the said Charles F. Pace, declared his intention to vote for affiant in the Democratic Primary Election to be held

in Bradford County, Florida, in the year 1936; that said letter has been lost or destroyed.

C. A. KNIGHT,

Sworn to and subscribed before me this 12th day of April, A. D. 1940.

E. K. PERRYMAN,
County Judge.

Notary Public, State of Florida, at Large.

My Commission expires: .....

37 "*Exhibit No. 7*"

STATE OF FLORIDA,
County of Bradford.

Personally appeared before the undersigned authority, Mrs. Vida V. Morgan, who, being first duly sworn, deposes and says: That she has been a resident of the Town of Starke, Bradford County, Florida, for more than 40 years; that she has known and been acquainted with the late Charles F. Pace all of her life; that she knows of her own knowledge that the said Charles F. Pace was a native of the State of Florida and that he, the said Charles F. Pace,

during all the time of her acquaintance with him; that affiant has acted as agent for the said Charles F. Pace in the supervision of and collection of rents from his real estate in the said Town of Starke during the time his employment by the United States Senate required his presence in Washington, D. C., and as such agent, affiant maintained a very close contact by correspondence with said Charles F. Pace; that throughout the correspondence the said Charles F. Pace frequently asserted his love for his native state and particularly his home town, namely, Starke, and as evidence thereof, affiant attaches hereto two letters, marked Exhibits 1 and 2; that by said letter, Exhibit #1, said Charles F.

Pace voluntarily contributed $20.00 to the upkeep of the cemetery at Starke, Florida,—joining in a civic movement to that end; that, by the letter, Exhibit #2, said Charles F. Pace, upon finding the said civic movement lagging in contributions, contributed an additional $20.00 to said movement, this total contribution of $40.00 being the largest individual contribution to said movement;

and that, the said Charles F. Pace stored in a building owned by himself, adjacent to affiant's property, furniture and other personal property.

(Seal) VIDA V. MORGAN

Sworn to and subscribed before me this 12th day of April, A. D. 1940.

E. K. PERRYMAN
County Judge

Notary Public, State of Florida at Large. My Commission expires: .....

Washington D.C.
Sept 16 1809

Dear Mr Morgan

I regret to see by Mr Thompson that the Senate negatived the appointment of Jesse Hall County Judge. I wonder for what reason it could be that Judge Hall has undertaken the Land Trust business if he was not to be appointed for Chariton. I hope it will be for a shorter term

All of my friends and both the members of the House of Repr. are pleased with our Constitution and I have little doubt entertained that of passing a good Judge of the Supreme Court and Laws to suit your Country

Yours Sincerely Thos H Benton

EXHIBIT 2

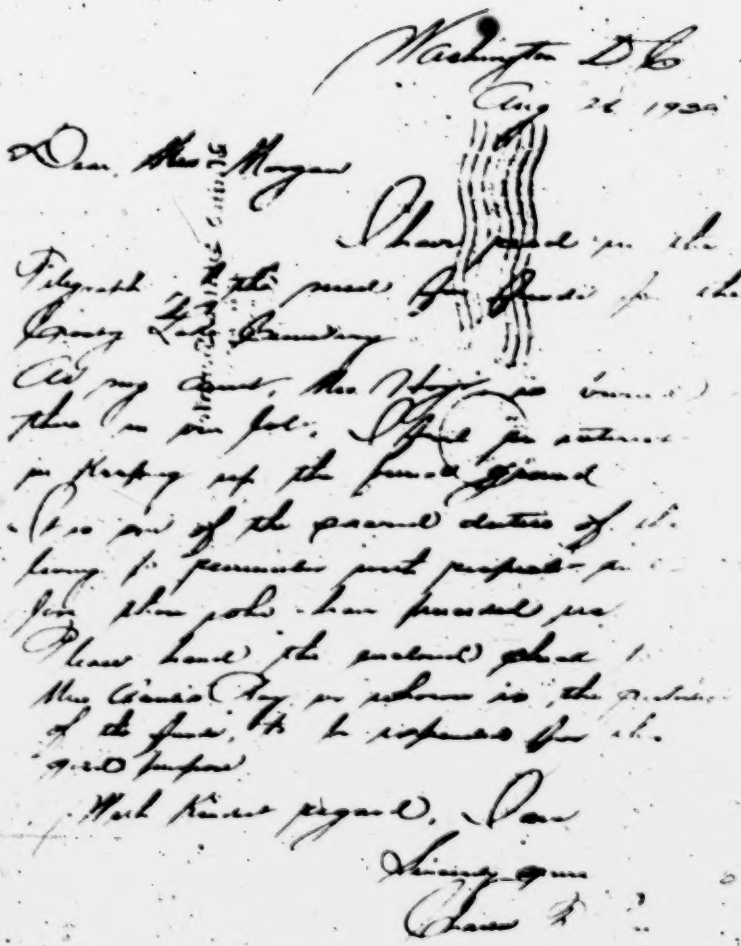

EXHIBIT =1

EXHIBIT 1a

United States Senate
OFFICE OF THE SECRETARY
FINANCIAL ROOM
IF NOT DELIVERED IN 5 DAYS, RETURN

WASHINGTON, D.C.
AUG 27
1939

OFFICIAL U.S. STAMP

Mrs. A. V. Morgan
Starke
Florida

WASHINGTON
1939

42 *"Exhibit No. 8"*

STATE OF FLORIDA,
County of Bradford.

Personally appeared before the undersigned authority E. L. Matthews, who, first being duly sworn, deposes and says: That he is the owner and active manager of a weekly newspaper known as and entitled the "Bradford County Telegraph", published in Starke, Bradford County, Florida; that the records of said newspaper show that Charles F. Pace was a subscriber to said newspaper, said subscription being dated October, 1918; that affiant knows of his own personal knowledge that the said Charles F. Pace was a continuous subscriber for 8 years last past, and that his current subscription to said newspaper expires on January 1, 1941.

Further affiant saith not.

Sworn to and subscribed before me this 12th day of April, A. D. 1940.

(Seal). E. L. MATTHEWS

E. K. PERRYMAN
County Judge.

Notary Public, State of Florida at Large.

My Commission expires: .....

43 *"Exhibit No. 9"*

STATE OF FLORIDA,
County of Bradford.

Personally appeared before the undersigned authority Joseph E. Wilson, who, being first duly sworn, deposes and says: That he is manager of the Harold C. Wall Agency, doing a general insurance business in the Town of Starke, Bradford County, Florida; that the records of said agency show that for the last past ten years—these being all the records of said agency—Charles F. Pace maintained fire insurance coverage on a private warehouse and household

and kitchen furniture owned by him, the said Charles F. Pace, situated at 201 South Cherry Street, Starke, Florida; that affiant knows, from the records of the said agency, and from his personal knowledge that the said Charles F. Pace, at the time of his death and for more than thirty years prior thereto, owned a substantial amount of real estate, both improved and unimproved, in Starke, Florida.

HAROLD C. WALL AGCY
By Jos. E. Wilson, Mgr

Sworn to and subscribed before me this 12th day of April, A. D. 1940.

S. K. PERRYMAN
County Judge.

Notary Public, State of Florida at Large.

My Commission expires: .....

44 Filed Apr 29 1940 Theodore Pogswell, Register of Wills. D. C. Clerk of Probate Court.

District Court of the United States for the District of Columbia

Hold Probate Court
No. 56643

In Re:
The Will of
Charles F. Pace, deceased

Order to Transmit Will to Domicile

Upon consideration of the petition of Elizabeth C. Pace, filed herein the 27th day of April, 1940, and it appearing to the satisfaction of the Court that the above named decedent Charles F. Pace, deceased, departed this life a resident of the Town of Starke, Bradford County, State of Florida, it is by the Court this 29th day of April, 1940.

Ordered, that the Register of Wills be and he is hereby authorized and directed to transmit by registered mail to

the Clerk of the County Court for Bradford County, State of Florida, at Starke, Florida, the paperwriting dated the 12th day of July, 1937, filed herein, and purporting to be the last will and testament of Charles F. Pace, deceased, and it is further

Ordered, that the Register of Wills retain a certified copy of said testamentary paper for the files of his office.

ALFRED EVERHART,
Chief Justice.

45 District Court of the United States for the District of Columbia

Supreme Court of the District of Columbia
Holding a Probate Court

District of Columbia, to-wit:

I, Theodore Cogswell, Register of Wills for the District of Columbia, Clerk of the Probate Court do hereby certify, That the foregoing are true copies of the original Exhibits (No. 1 to No. 9 inc.) which accompanied Petition for transmittal of Will to domicile of decedent, filed in the office of the Register of Wills for the District of Columbia, Clerk of the Probate Court, and of the original Order of Court of April 29, 1940, authorizing and directing transmittal of Will to Clerk of the County Court of Bradford County, State of Florida, at Starke, Florida, filed and recorded in said office; in the matter of the estate of Charles F. Pace, deceased. Case No. 56,643. Adm. Doc. 121.

I further certify, That I have compared said copies with the original paper and original record, respectively, in said office, and find them to be full, true, and correct transcripts thereof.

Witness my hand and the seal of the said Probate Court, this 6th day of June, A. D. 1941.

(Seal) THODORE COGSWELL
Register of Wills for the District of Columbia,
Clerk of the Probate Court.

46 *"Stipulation Exhibit B"*

November 27, 1939

Mr. Chas. F. Pace,
1851 Columbia Road,
Washington, D. C.

Dear Charlie:

I have your letter of November 25th. I am sorry to hear you are not feeling as well as when I saw you last summer.

We will, of course, be glad to sell the Government bonds after December 15th, if you so desire. I presume the bonds are in Washington. You could deliver them to our correspondent there, The Riggs Bank, for our account and we can then have them deliver the bonds for us. My suggestion to you, however, is this. That you go to any of the following offices in Washington:

C. F. Childs and Company
First of Boston Corporation
Salomon Bros. and Hutzler

These are three of the biggest dealers in Government bonds in the United States. You can get a price from any of them, or all of them, on any issue of Government bonds, and you can see which will offer you the best price. You can do this over the telephone. There may be no difference at all in the price, or there may be a difference of not more than 1/32 or 2/32 of a point. By selling the bonds through any of these three you will avoid having to pay us any fee or commission for the sale of the bonds and possibly also avoid any transportation on the bonds from Washington to New York. They are responsible and will give you a check on a Washington bank, if you request, and you can dispose of it as you see fit.

If, however, you still wish us to sell the bonds, by delivering them to the Riggs Bank for our account it would avoid shipping charges and insurance on the bonds to Jacksonville and back to New York from Jacksonville. Frankly,

however, at the present time I don't see why you
47 don't keep the bonds. They will be as good as cash
in your estate in the event of your death. At the same time you will be getting an income from them instead of putting cash in a safe deposit box where it would do you no good.

I mentioned to you once before the advisability of making a trust for your sister and relieving her of all the trouble of having to administer your estate and handle investments after your death. I feel very sure she is not able to attend to these things herself and will have to call upon someone to do so for her, should you precede her. Why don't you come down, as I originally suggested, and discuss this matter with us? Of course, such a trust would contain any provision you wished to make.

Sincerely yours,

President.

WRM/lht

1851 Columbia Road
Washington, D.C.
Nov 27 1929

Mr. William A. McQuaid
Jacksonville Fla.

Dear Will

Many thanks for your kind letter of 22nd ulmo. glad the bonds

know the Rugg Holmes people very well. for they have not been a business day in twenty five years that they failed to pay their business, sometimes they pay business, before they have all the dividends, three of the banks had good assets & good personal balances but unfortunately it is paid to your bank some years ago. I don't know but that money could put it back some more into the bank now under receivership

As of the Real Properties of the banks became very slow in selling the to pull themselves out of their real

of ... I had p me
(I rec'd all the Officers except the 17th
but have never been ... of this
from ...)
Now I am here, p station p any place
where ... to be, but hope before
me ... to ... one ... such
place ... the ...

I have got a few books here and
will get me ... when I leave
my little quarters.

I send ... p ... a letter
from me to you but ... per
haps ... it is full best
wishes p you

Again thanking you ... I am

Yours truly

Edmund P. Pace

50

The Barnett National Bank
of Jacksonville

Jacksonville, Florida
December 2, 1939

Mr. Chas. F. Pace,
1851 Columbia Road,
Washington, D. C.

My dear Charlie:

I have your letter of November 29th. I think possibly you misunderstood my letter of November 27th as indicating that we were not perfectly willing to sell your bonds for you. My suggestion about delivering the bonds to the Riggs Bank was made, of course, without any knowledge of any difference you had had with the bank and was made simply for the purpose of saving you the expense of shipping the bonds here. And, further, my suggestion as to selling them direct to Childs and Company, First of Boston Corporation, or Salomon Brothers and Hutzler, was made for the purpose of saving you transportation charges and also the commission you would pay to any bank if you had them sell the bonds, as any bank to whom you gave the bonds for sale would sell them direct to one of the several large firms specializing in Government bonds.

There are only a limited amount of Government bonds sold on the New York Stock Exchange. By far the largest amount of bonds is sold as it may be termed "over the counter" to one of these large dealers specializing in Government bonds. We, ourselves, in selling our own bonds never attempt to sell them on the Stock Exchange, as we can get a better price by dealing direct with these dealers, asking them for bids. They make a price which is the price they pay for the bonds and there is no commission charged by them as they are purchasers. As they do an enormous volume of business the spread between the bid and asked price, that is the price at which they will either buy or sell, is very small. Usually this difference between the bid and asked

50

The Barnett National Bank
of Jacksonville

Jacksonville, Florida
December 2, 1939

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price is only 2/32 of a point. In other words, a difference of about 60c on a thousand-dollar bond.

If you go to another bank in Washington and ask them to sell the bonds for you, they will in turn sell these bonds to one of these dealers, and also charge you a commission themselves, the same as we would do. The dealers mentioned to you are thoroughly responsible and if you wish to save this commission and transportation charges,
51 you will be perfectly safe in selling your bonds through them, taking their check which you can cash immediately in Washington, in payment of the bonds. However, let me reiterate, I will be most happy to serve you, if you wish to pay us a commission and pay the cost of transportation of the bonds.

Again referring to the last paragraph of my letter of November 27th. As a lawyer you, of course, realize that if you die without a will that the court would have to appoint an administrator of your estate; and if you have made a will naming your sister as executor, it is going to entail some trouble for her in settling your estate; and as you own real estate here in Florida it will require the appointment of an ancilliary executor in Florida. I presume your assets consist of cash, Government bonds, and real estate, the latter only in Florida. It is evident from the fact you are selling Government bonds that you are not satisfied to put your money in any form of investment.

You probably feel the amount of cash you would leave is more than ample to provide for the comfort of your sister during her lifetime without investing it. If such were the case and you would provide in a trust for her benefit that these funds were not to be invested but were to be held uninvested, then the bank handling them would have to put up with the Federal Reserve Bank securities ample in amount to cover the entire amount of cash which the trust department of the bank would deposit with the commercial department. In other words, insured regardless of the solvency of any bank, as the cash of all trusts must be amply secured.

Of course, you could provide for a trust, having the Barnett National Bank act as trustee for your sister without the bank being named as executor. I presume you are now a resident of the District of Columbia and are filing your income tax returns there. I notice the District of Columbia has an inheritance tax, and on an estate of approximately $300,000 this would amount to about $20,000; whereas, this amount would be saved if you establish your residence in Florida. This should not be difficult as you own so much property in Florida and I presume the District of Columbia is more lenient than are the states in permitting employees of the Government who reside all the time in the District to maintain their residence in the state from which they came, by filing income tax returns and voting in these states. Of course, if you did not wish to make Florida your residence by going to the trouble of coming down here to vote in the general elections, and wish to retain your residence in the District and be subject to the inheritance tax; you could, as I suggested to you in 1938, make me a co-executor so that I, as executor, could handle your your estate as a resident of the District of Columbia. All compensation, however, to go to the Barnett National Bank and to be so provided in your will. You have probably considered all these things and determined just what you want to do. Since you raised the question with me once, I am taking the liberty of again making these suggestions to you.

52

Why don't you follow my suggestion and come down and discuss this with us, and at the same time go into the question of your property holdings, both here and at Starke, which you have not seen for a number of years? After Congress convenes in January you will probably be too busy to do so.

Sincerely yours,

WILLIAM R. McQUAID

WRM/lht

53 December 7, 1939

Mr. Chas. F. Pace,
1851 Columbia Road,
Washington, D. C.

Dear Charlie:

I received your nice letter of December 5th and note that because of the rush of work at this particular time you wont be able to follow my suggestion of making a trip to Florida. If at any time you wish to go into the matter suggested to you, we will be only too happy to do so.

With my best regards,

Sincerely yours,

WILLIAM R. McQUAID

WRM lht

54 Filed Jun 14 1940. Theodore Cogswell, Register of Wills, D. C. Clerk of Probate Court

"*Stipulation Exhibit C*"

Last Will and Testament of Charles F. Pace.

I, Charles F. Pace, of the City of Washington, District of Columbia, being of sound mind and disposing memory, do hereby make, publish and declare this my Last Will and Testament, hereby revoking any former will or wills and codicils thereto,

Item I.

I direct that my Executrices hereinafter named shall, out of my estate, pay all of my just debts and funeral expenses as soon after my decease as may be found convenient.

Item II.

I give, devise and bequeath all my estate, real, personal or mixed, of whatsoever kind and nature and wheresoever situated, to my beloved sisters, Mary S. Pace and Elizabeth C. Pace, share and share alike, or, in the event either of my

said sisters shall predecease me, then the survivor shall take the whole.

Item III.

I hereby make, constitute and appoint my said sisters, Mary S. Pace and Elizabeth C. Pace, or the survivor of them, Executrices of this, my Last Will and Testament, and I further direct that my Executrices or the survivor of them be not required to furnish bond for the faithful performance of their duties as such, either to the Court wherein this will is originally probated, or to any Court wherein it may be found necessary to institute ancillary probate of this will or ancillary administration on my said estate.

In Witness Whereof, I have hereunto set my hand and seal this, the 12th day of July, A. D. 1937.

CHARLES F. PACE (SEAL)

Signed, sealed, published and declared by the above named testator, Charles F. Pace, as and for his Last Will and Testament, in our presence who, in his, the Testator's presence, and in the presence of each other, at his, the Testator's request, have hereunto subscribed our names and addresses, this, the 12th day of July, A. D. 1937.

Name

Chester M. Reich, 1617 D St N. E. Wash. D. C.
Oco Thompson, 6110 Board Br. Rd. Wash. D. C.
Joseph C. Ellis, 1628 C Street N. E. Wash. D. C.

55 District Court of the United States for the District of Columbia

Supreme Court of the District of Columbia Holding a Probate Court

District of Columbia, to wit:

I, Theodore Cogswell, Register of Wills for the District of Columbia, Clerk of the Probate Court, Do Hereby Certify, That the foregoing is a true copy of the exemplified copy of

the original Will of Charles F. Pace, deceased, as filed and recorded in the office of the Register of Wills for the District of Columbia; being certified in due form to have been regularly admitted to probate and record in the Court of the County Judge of the County of Bradford, State of Florida.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the said Probate Court, this 6th day of June, A. D. 1941.

THEODORE COGSWELL
Register of Wills for the District of Columbia,
Clerk of the Probate Court.

56 Filed Jun 14 1940. Theodore Cogswell, Register of Wills, D. C. Clerk of Probate Court

"Stipulation Exhibit D"

District Court of the United States for the District of Columbia

Holding Probate Court

Administration No. 56-643.

In Re: The Estate of Charles F. Pace, deceased.

Petition for Ancillary Letters Testamentary

To the Honorable, the District Court of the United States for the District of Columbia, holding probate court:

The petition of Elizabeth C. Pace respectfully represents to this Honorable Court:

1. That your petitioner is the executrix duly appointed and qualified of the estate of the above named Charles F. Pace, deceased, by virtue of letters testamentary granted to your petitioner on the 23rd day of May, 1940, by the County Judge's Court in and for Bradford County in the State of Florida, and that the said letters testamentary are in full force and effect.

2. That the said Charles F. Pace, late a resident of Bradford County, State of Florida, departed this life in the City of Washington, District of Columbia, on the 20th day of March, 1940, leaving a paper-writing dated the 12th day of July, 1937, purporting to be the last will and testament of said decedent, and that said paper-writing, upon satisfactory proof duly taken, was admitted to probate and record as the last will and testament of the said Charles F. Pace, deceased, on the 20th day of May, 1940, in Bradford County, State of Florida.

3. That upon the petition of Elizabeth C. Pace, petitioner herein and sister of said decedent, who is named in said will as executrix and sole beneficiary, she was appointed executrix of the estate of said decedent as herein above mentioned, and thereafter duly qualified as such; that
57 certified copies of said will, the proof had thereon, the petition of Elizabeth C. Pace, the order of probate, and letters testamentary showing her to have taken the prescribed oath and performed all other acts necessary to her legal qualification are hereto annexed, and prayed to be read and considered as a part hereof.

4. That said decedent was at the time of his death seized and possessed of no real estate located in the District of Columbia.

5. That said decedent left personal property in the District of Columbia as follows: stocks and bonds of an approximate value of $218,000.00, cash in the amount of $1,334.16, and unsecured promissory notes of a face value of $410.00, which your petitioner is advised are of an extremely doubtful value.

6. That so far as your petitioner has, after diligent inquiry, been able to ascertain, the total indebtedness of said decedent at the time of his death was in an amount not in excess of the sum of $100.00. That the total cost of funeral and burial, now owing, is the sum of $1,015.00.

7. That your petitioner is advised and believes that in order to collect and preserve the assets of said decedent in

the District of Columbia it is necessary that ancillary letters testamentary be granted by this Court, and petitioner is advised that by reason of her appointment and qualification as domiciliary executrix, she is primarily entitled to ancillary letters testamentary on said estate in this District.

Wherefore, the premises considered, your petitioner respectfull prays:

I. That ancillary letters testamentary may be granted to her upon the estate of said Charles F. Pace, deceased, upon her giving an undertaking, conditioned upon the payment of all debts and just claims against said estate, and all damages which may be recovered against her as executrix.

II. And for such other and further relief as the
58 nature and circumstances of the same may require and to this Honorable Court may seem just and proper.

ELIZABETH C. PACE

GEORGE H. HAPP,
Oriental Building,
Washington, D. C., and
HAZARD & THAMES,
Atlantic National Bank Bldg.,
Jacksonville, Fla.,
Attorneys for Petitioner.

District of Columbia, to wit:

I, Elizabeth C. Pace, do solemnly swear, that I have read the foregoing Petition by me subscribed and know the contents thereof; that the statements therein made as of my personal knowledge are true; and that those made upon information and belief, I believe to be true.

ELIZABETH C. PACE

Subscribed and Sworn to before me this 14th day of June, 1940.

JAMES CONLON,
(Seal) *Notary Public, D. C.*

59 Filed Jun 17 1940. Theodore Cogswell, Register of Wills, D. C. Clerk of Probate Court

District Court of the United States for the District of Columbia

Holding Probate Court
Administration No. 56-643.

In Re: The Estate of Charles F. Pace, deceased.

Order Granting Ancillary Letters Testamentary

Upon consideration of the petition of Elizabeth C. Pace, filed herein on the 14th day of June, 1940, and the exemplified copy of the Last Will and Testament of Charles F. Pace, deceased, dated the 12th day of July, 1937, filed herein, together with the proceedings of the County Judge's Court of Bradford County, State of Florida, and it appearing to the Court that the said Last Will and Testament was on the 20th day of May, 1940, duly admitted to probate and record in said County Judge's Court of Bradford County, State of Florida, it is by the Court this 17th day of June, 1940.

Ordered that ancillary letters testamentary be and they hereby are issued to Elizabeth C. Pace, executrix nominated and appointed in and by said Last Will and Testament upon her giving an undertaking in the penalty of Three Thousand Dollars, conditioned upon the payment of all debts and just claims against the estate of Charles F. Pace, deceased, and all damages which may be recovered against her as executrix, and all legacies bequeathed by said Last Will and Testament, provided she files a non resident power of attorney in accordance with Section 308a, D. C. Code.

JESSE C. ADKINS
Justice.

60 District Court of the United States for the District of Columbia

Supreme Court of the District of Columbia
Holding a Probate Court

District of Columbia, to wit:

I, Theodore Cogswell, Register of Wills for the District of Columbia, Clerk of the Probate Court Do Hereby Certify, That the foregoing are true copies of the original Petition of Elizabeth C. Pace for Ancillary Letters Testamentary filed in the office of the Register of Wills for the District of Columbia, Clerk of the Probate Court, and of the original Order of Court of June 17, 1940, granting Ancillary Letters Testamentary unto Elizabeth C. Pace filed and recorded in said office; in the matter of the estate of Charles F. Pace, deceased. Case No. 56,643. Adm. Doc. 121.

I Further Certify, That I have compared said copies with the original paper and original record, respectively, in said office, and find them to be full, true, and correct transcripts thereof.

Witness my hand and the seal of the said Probate Court, this 6th day of June, A. D. 1941.

(Seal) THEODORE COGSWELL,
Register of Wills for the District of Columbia, Clerk of the Probate Court.

61 *"Stipulation Exhibit E"*

In the Court of the County Judge in and for Bradford County, Florida, in Probate. Case No.

In re: Estate of CHARLES F. PACE, Deceased.

Report of Appraisers

To: Hon. E. K. Perryman, County Judge.

Your Petitioners, Joseph E. Wilson, W. R. McQuaid and Clarence Nussbaum, would respectfully represent unto

Your Honor that they are the duly appointed and qualified appraisers of the estate of Charles F. Pace, deceased, as more fully appears from the Warrant of Appraisement heretofore filed in this cause; that in accordance with said Warrant of Appraisement your Petitioners did appraise all the property of the estate of said decedent which came into their knowledge and that said property, together with the value thereof, is as follows:

Real Estate

In Bradford County, Florida.

Lots 1 and 3, Block 19, Town of Starke, according to the original plat or map of said town;	$11,000.00
West Half of Lot 2, Block 25, Town of Starke, according to the original plat or map of said town;	200.00
Fractional lots "C" and "D", Block 35, in J. M. Johns' Addition to Town of Starke in Southeast Quarter of Southwest Quarter, Section 28, Township 6 South, Range 22 East;	400.00

In Clay County, Florida.

Lot 10, Milbyrne Triangle, a sub-division of the Town of Orange Park, Florida, according to plat of said sub-division recorded in the public records of Clay County, Florida, in Plat Book 2, page 34, together with such riparian rights as thereto properly appertain;	2,000.00
Lots 1, 2 and 3, Block 21, Section 2, Orange Park, according to plat of the land of the Florida Winter Home and Improvement Company, recorded in Deed Book "K", pages 58 and 59, and later transferred to Plat Book 1, page 23, of the public records of said county;	500.00
Lots 6, 7, 8 and 9, Section 3, Orange Park, Clay County, Florida, according to the map of the Florida Winter Home and Improvement Com-	

pany's lands, originally recorded in Deed Book "K", at pages 58 and 59, and later transferred to Plat Book 1, at page 23, of the public record of Clay County, Florida 1,261.50

Lot 83, Section 4, Orange Park, as per plat of the lands of the Florida Winter Home and and Improvement Company, recorded in Book "K", pages 58 and 59, and afterwards transferred to Book 1, page 23, of the public records of said county, together with all riparian rights to the said land appertinent or in any wise appertaining. Reserving, however, a strip of land sixty (60) ft. wide, across this lot along the shore of Doctors Lake for a right-of-way or boulevard, as now laid out and established. 1,500.00

Lot 1 of U. S. Government Fractional Section 4, and Lots 2, 3, 4, 16, 16 and 17 of Fractional Lot 18, of Section 5, all in Township 4 South, Range 26 East, as shown by the map of the Florida Winter Home and Improvement Company's lands, as recorded in Book "K", page 59, and later transferred to Book 1, page 23, of the public records of Clay County, Florida 1,730.00

In Duval County, Florida.

Lots 1, 2, 21 and 22, Block "I", Island View, a sub-division of the A. Hull Grant, Section 40, Township 3 South, Range 26 East, as recorded in Plat Book 6, page 10, of the current public records of Duval County, Florida. 1,500.00

The East Thirty (E 30) feet of Lot 8, and West Ten (W 10) feet of Lot 9, Block 15, New Riverside, according to plat thereof, recorded in Plat Book 3, page 54, of the current public records of Duval County, Florida; 2,200.00

Lot 6, Block 19, Parker's Subdivision of East Jacksonville, commonly known as Fairfield, according to plat recorded in Deed Book "Q", page 704, of the former public records of Duval County, Florida; 650.00

Lot 11, Block 31, Springfield, according to plat recorded in Plat Book 2, page 4, of the current public records of Duval County, Florida: 887.32

South Half of Lot 2, Block 29, Ortega, according to plat thereof recorded in Plat Book 3, page 40, of the current public records of Duval County, Florida; subject to equity of Aaron B. Collier and wife, accrued by reason of articles of agreement made and entered into on August 1, 1935, between Charles F. Pace and Aaron B. Collier and wife, on which said agreement the said Aaron B. Collier and wife were indebted to the decedent in the amount of $816.25, as of March 1, 1940.

63

Value of estate's equity in contract 816.25

6 per cent interest thereon, March 1, 1940, to date of death. 2.58

A part of Lot 123, Wilder's Subdivision of Hansontown, according to the plat recorded in Plat Book 1, page 3, of the former public records of Duval County, Florida, more particularly described as: Beginning at the northwest corner of West State Street and an alley, and running thence northerly along west side of said alley Seventy-two (72) feet to a fence corner, thence running westerly along the fence Sixty-two feet more or less to a fence corner, which fence corner is Fifty-seven (57) feet northerly from the North side of West State Street; thence running southerly along the fence and the continuation thereof Fifty-seven (57) feet to a point on

the north side of State Street, which point is Sixty-six and four-tenths (66.4) feet Westerly from the point of beginning; running thence southeasterly along the north line of said West State Street Sixty-six and four-tenths (66.4) feet to point of beginning; subject, however, to the equity of Rosie Holmes Walker, a free dealer, by reason of the articles of agreement dated October 15, 1938, between Charles F. Pace and Rosie Holmes Walker, on which said Articles of Agreement said Rosie Holmes Walker, was indebted to the decedent in the amount of $3,916.89, as of January 15, 1940.	
Value of estate's equity in contract	3,500.00
East Half of Lot 7, Block 108, Riverside, according to plat thereof recorded in Plat Book 1, page 109, of the former public records of Duval County, Florida; subject, however, to the equity of Henry Claudius Williams and Maggie L. Williams, his wife, by reason of articles of agreement dated February 1, 1936, between Walter I. Stevenson and wife, and Henry Claudius Williams, and Maggie L. Williams, his wife, under which said articles of agreement said Henry Claudius Williams and Maggie L. Williams, his wife, were indebted to the decedent in the amount of $1,608.21, and interest thereon from February 28, 1940. Value of estate's equity on contract	1,608.21
6 per cent interest thereon February 28, 1940, to date of death	5.63
Foreign real estate	
Undivided four-ninths (4/9) interest in four (4) lots in Lunenberg County, Province of Nova Scotia, Dominion of Canada	533.33
Total appraised value of real estate:	$30,294.82

Personal Property

Promissory notes secured by mortgages on real estate in Duval County, Florida.

Mortgage note, Ralph Emmett Bay, and Mae E. Bay, to Barnett National Company, secured by mortgage recorded in Mortgage Book 492, page 183, assigned to Charles F. Pace
64 per assignment of mortgage recorded in Mortgage and Lien Assignment Book 63, page 448, encumbering a part of the East One-half (E½) of Lot Two (2), Block Ninety-seven (97), Doggett's Map of Jacksonville, more particularly described as follows: Beginning at a point on the North side of East Union Street One Hundred Eighty-three and seventy-five hundredths (183.75) feet East of Market Street, and running thence Easterly along the North side of East Union Street Twenty-six and twenty-five hundredths (26.25) feet; thence northerly One Hundred Five (105) feet; thence westerly, parallel with East Union Street Twenty-six and twenty-five hundredths (26.25) feet; thence southerly One Hundred Five (105) feet to point of beginning; principal balance as of date of death, $2,100.00; 6 per cent interest thereon, January 18, 1940, to date of death. Appraised principal value as of date of death 2,100.00

6 per cent interest thereon, January 18, 1940, to date of death 21.77

Mortgage note, Charles A. Brown, Jr., to Charles F. Pace, secured by mortgage recorded in Mortgage Book 471, page 392, encumbering an undivided One-half interest in Lots Twelve (12), Thirteen (13), Sixteen (16), Seventeen (17), Eighteen (18) and Nineteen (19), Block One (1), Lots Thirteen (13) to

Nineteen (19), both inclusive, Block Two (2), and Lots Ten (10) to Thirteen (13), both inclusive, Block Three (3), Oakdale, according to plat recorded in Plat Book Two (2), page 76, Duval County, Florida, public records; principal balance as of date of death, $2,500.00, 8 per cent interest thereon, January 1, 1930, to date of death. Appraised value of mortgage indebtedness as of date of death — None

Mortgage note, W. F. Graves to Barnett National Company, secured by mortgage recorded in Mortgage Book 489, page 443, assigned to Charles F. Pace, per assignment in Mortgage and Lien Assignment Book 63 page 132, title to property vested in F. W. Brundick, Jr. and Fannie E. Brundick, his wife, the property encumbered being described as: Lots Seven (7) and Eight (8) of Phillips' Replat of Blocks (7) and Eight (8), James'. Subdivision of Riverside, according to plat thereof recorded in Plat Book 2, page 97, of the current public records of Duval County, Florida; principal balance as of date of death, $3,500.00, 6% interest thereon, March 18, 1940, to date of death. Appraised principal value as of date of death — 3,500.00

6% interest thereon, March 18, 1940, to date of death — 1.17

Mortgage note, Dorla Investment Company, a corporation, to Charles F. Pace, secured by mortgage recorded in Mortgage Book 475, page 381, encumbering North Half (N½) of Lot Four (4), and South Half (S½) of Lot Three (3) of Block Forty-one (41) Brooklyn Extension, being a subdivision of Riverside, and also being known as 539 and 545 Dellwood Avenue (old numbers 736 and 742 Dellwood Ave-

nue) Jacksonville, Florida. Principal balance as of date of death, $2,750.00, 6% interest thereon March 18, 1940, to date of death. Appraised value of mortgage indebtedness, including advance of December 8, 1936, to pay delinquent taxes in sum of $372.91 1,375.00

65 Mortgage note, Banks H. Goodale, to Barnett National Company, secured by mortgage recorded in Mortgage Book 465, page 117, assigned to Charles F. Pace per assignment in Mortgage and Lien Assignment Book 67, page 88, encumbering South Half (S½) of Lot Ten (10), of a replat of Block Sixty (60), Springfield, according to plat recorded in Plat Book 7, page 11, of the current public records of Duval County, Florida. Principal balance as of date of death, $3,300.00, 6% interest thereon, March 1, 1940, to date of death. Appraised principal value as of date of death 3,300.00

6% interest thereon, March 1, 1940, to date of death 10.45

Mortgage note, Charles A. Brown, Jr. to Charges F. Pace, secured by mortgage recorded in Mortgage Book 174, page 428, title to property vested in Marie Louise Schubert, et al., encumbering Lot Four (4), Block Three (3), Brown's Subdivision of Lot One (1), Section Twenty-one (21), Township Three (3) South, Range Twenty-six (26) East, being a replat of Yukon, as recorded in Plat Book 7, page 1, public records of Duval County, Florida. Principal balance due as of date of death, $2,000.00; 6% interest thereon January 1, 1940, to date of death. Appraised principal value as of date of death 2,000.00

6% interest thereon, January 1, 1940, to date of death 6.33

Mortgage note, Mrs. Alice M. Rainey to Charles F. Pace, secured by mortgage recorded in Mortgage Book 35, page 224, title to property now vested in Edna B. McRae, encumbering East Half (E½) of Lot Fifteen (15), Block Seventy-seven (77), Springfield, according to plat recorded in Plat Book 2, page 4, Duval County, Florida, public records; principal balance due as of date of death, $2,000.00, 6% interest thereon, November 3, 1939, to date of death. Appraised principal value as of date of death 2,000.00

6% interest thereon, November 3, 1939, to date of death 45.67

Mortgage note Hill Investment Company, a corporation to Charles F. Pace, secured by mortgage recorded in Mortgage Book 486, page 13, title to property now vested in Jeannette and Henry Simpson, husband and wife, encumbering Lot 26, Riverside Park Place Terrace, according to plat recorded in Plat Book 14, page 30, of the current public records of Duval County, Florida; principal balance as of date of death, $2,500.00, 6% interest thereon, January 28, 1940, to date of death. Appraised principal value as of date of death 2,500.00

6% interest thereon, January 28, 1940, to date of death 21.67

Mortgage note, Tucker-Marks Company, a corporation, to Charles F. Pace, secured by mortgage recorded in Mortgage Book 518, page 492, encumbering Lot Twenty-two (22), Block One (1), Riverside Park Place, according to plat recorded in Plat Book 4, page 32, of the
66 public records of Duval County, Florida; principal balance as of date of death, $2,190.00; 6% interest thereon December 16,

1939, to date of death. Appraised principal value as of date of death 2,190.00

6% interest thereon, December 16, 1939, to date of death 12.05

Mortgage note, Charles A. Brown, Jr., to Charles F. Pace, secured by mortgage recorded in Mortgage Book 56, page 51, title to property now vested in Earl M. Vestal, encumbering South Half (S½) of Lot Four (4), Block Thirty-one (31), Springfield, according to plat recorded in Plat Book 2, page 4, Duval County, Florida, public records; principal balance due as of date of death, $2,500.00; 6½ per cent interest thereon, December 20, 1939, to date of death. Appraised principal value as of date of death 2,500.00

6½ per cent interest thereon, December 20, 1939, to date of death 40.63

Mortgage note, W. J. Wilson, Charles A. Brown, Jr., Charles C. McCubbin, J. B. Arnold, to Charles F. Pace, secured by mortgage recorded in Mortgage Book 158, page 762, title to property now vested in Wilson Properties, Inc., a corporation, encumbering Lot Three (3), Block Two (2), Wilbur's Subdivision of the Hudnall Grant in that part of the City of Jacksonville commonly called East Jacksonville, according to plat recorded in Book "E" (S. P. M. W) page 212, of the former public records of Duval County, Florida; principal balance as of date of death, $2,000.00; 4 per cent interest thereon, March 1, 1933, to date of death. Appraised value of mortgage indebtedness as of date of death. 960.00

Mortgage note, Ella F. Wilson and W. J. Wilson to Charles F. Pace, secured by mortgage recorded in Mortgage Book 106, page 478, title

to property now vested in Wilson Properties, Inc., a corporation, encumbering Lots One (1), Two (2), Three (3), Four (4), Five (5), Twenty (20), Twenty-one (21), Twenty-two (22), Twenty-three (23) and Twenty-four (24), Block Two (2), Stewart's Addition to Jacksonville, Florida, according to plat recorded in Plat Book 1, page 78, of the former public records of said Duval County; principal balance as of date of death, $2,500.00, 4 per cent interest thereon, January 1, 1940, to date of death. Appraised value of mortgage indebtedness as of date of death 2,000.00

Mortgage note, W. J. Wilson, Charles C. McCubbin, Charles A. Brown, Jr., and J. B. Arnold, to Charles F. Pace, secured by mortgage recorded in Mortgage Book 145, page 521, title to property now vested in Wilson Properties, Inc., a corporation, encumbering All that certain piece, parcel or tract of land, situate, lying and being in the City of Jacksonville, County of Duval, and State of Florida, known and described as: Being part of the Isaac Hendrick's Grant, Section Forty-one (41), Township Two (2) South, Range Twenty-six (26) East, shown on a map of Seewald's Subdivision, as heretofore recorded in Book Three (3), of plats, page 14, of the current public records of said county, being bounded on the south by Dennis Street, on
67 the west by Estelle Street, on the north by the right of way of the Seaboard Air Line Railway and on the east by the fence enclosing the lands heretofore owned by Ida T. Cante and John Cante, her husband; principal balance as of date of death, $1,500.00; 4 per cent interest thereon February 12, 1933, to date of death; Appraised principal value as of date of death 1,500.00

4 per cent interest thereon, February 12, 1933, to date of death 486.33.

Mortgage note, Lilly H. Wood, to Charles F. Pace, secured by mortgage recorded in Mortgage Book 361, page 253, title to property now vested in Mary E. Freer, encumbering Lots Six (6) and Seven (7), Block Fifty-five (55), Murray Hill Heights, according to plat recorded in Plat Book 5, pages 86 and 86A, of the current public records of Duval County, Florida; principal balance as of date of death, $2,500.00 8 per cent interest thereon, July 6, 1930, to date of death. Appraised principal value of mortgage indebtedness as of date of death 470.78

Notes secured by mortgages on real estate located in Clay County, Florida.

Mortgage note, Louis E. Wolfson and Sam Wolfson, to Charles F. Pace, secured by mortgage recorded in Mortgage Book "V", page 171, encumbering lots Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Seventeen (17), Eighteen (18), Nineteen (19), and Twenty (20), Block Three (3), Section One (1), Orange Park, Clay County, Florida, according to the map of the Florida Winter Home and Improvement Company's Lands in Plat Book 1, page 23, records of Clay County, Florida, excepting those portions of the above described property lying north of the south boundary of Eldridge Avenue and East of the West boundary of New York Avenue, and excepting also those portions of such property lying within the right of way of U. S. Highway #17, also known as Florida Highway #3, as now laid out and

established. Subject to turpentine lease executed by the mortgage herein to W. H. Howard, on the 1st day of December, 1937, and duly recorded in Deed Book 36, page 270, Clay County, Florida, public records; principal balance due as of date of death, $2,000.00; 6 per cent interest thereon, November 15, 1939, to date of death. Appraised principal value as of date of death 2,000.00

6 per cent interest thereon, November 15, 1939, to date of death 41.67

Miscellaneous

Household goods and personal effects now stored in warehouse located on the West Half (W½) of Lot Two (2), Block Twenty-five (25), as per map or plat of the Town of Starke None

Claim of indebtedness now on file in the estate of Charles A. Brown, Jr., deceased, in the County Judge's Court in and for Duval
68 County, Florida, in the total amount of $11,434.39 None

Bank deposit in The Atlantic National Bank of Jacksonville, as of date of death 8,416.79

Balance due as of August 23, 1937, on open account indebtedness A. B. Collier, account advances for insurance and unpaid rent at time of contract 14.01

List of Personal Property in District of Columbia

Stocks

Certs. No. 8864 and 8865 for 100 shares each, Common stock, Tampax, Inc. Inventory value, $950.00; appraised value as of date of death 1,312.50

Cert. No. 695995 for 100 shares, Capital stock, American Telephone and Telegraph Company, Inventory value, $15,800.00; appraised value as of date of death 17,162.50

Cert. No. 4, for 1 share, and Cert. No. 5, for 52 shares, Capital stock. Olpachnuh Company, Estimated value in inventory, $2,801.40. Appraised value as of date of death	2,854.90

Bonds

Consolidated Federal Land Banks. 3% due May 1, 1956, Coupon May 1, 1940, #13765E/66F, 10425E/26F, 10430L, 11513C, 6156F, 11515-E 14D, and 10431A for 10M each. Inventory value, $100,000.00. Value as of date of death	107,033.33
United States Treasury. 3% due June 15, 1948. Coupon June 15, 1940, #8805E, 20635E, 880-7H/06F, 12449K, 7389K, 8804D & 8808J, for 10M each. Inventory value, $80,000.00. Value as of date of death	89,458.34
United States Treasury. 3% due Sept. 15, 1955, coupon, Mar. 15, 1941. #37864D. Inventory value, $10,000.00. Value as of death	11,132.30
United States Treasury. 3⅛%, due 1946/49. Coupon June 15, 1940. #37386F. Inventory value, $10,000.00. Value as of date of death	11,271.53
Above bonds are not negotiable.	
Coupon No. 22, United States Liberty Bond No. 600029483. Due date Oct. 15, 1929	2.13

Cash

Proceeds Gold Coins	27.50
On deposit American Security & Trust Company, Washington, D. C., Account No. 29118	189.32
Cash	1,117.34

69 Promissory Notes

The following demand notes, unsecured, are payable to Charles F. Pace, and the present value of the same is considered to be extremely doubtful:

October 22, 1935, Ray Price, face value, $22.00, less a credit of $17.00	$	5.00
October 1, 1936, Daisye L. Trammell, face value, $35.00, less a credit of $20.00		15.00
Dec. 18, 1937, Daisye Trammel		10.00
May 27, 1938, Ray Price		150.00
May 28, 1938, James M. Cathcart		40.00
July 11, 1938, Daisye L. Trammell and Sterling J. Trammell		50.00
May 16, 1939, Wily T. Conly		100.00
Receipt to Charles F. Pace dated January 25,1938, from Daisye Trammell and Sterling Trammell		40.00
Value as of date of death		None
Total appraised value of personal property		$279,016.01

Recapitulation

Total appraised value of real estate	30,294.82
Total appraised value of personal property	279,016.01
	$309,310.83

Wherefore, the premises considered, Your Petitioners pray that this report may be filed and they may be allowed reasonable compensation for their attendance and services herein, and submit herewith their affidavit as to the reasonable value of said services.

Dated at Starke, Florida, this 10 day of July, A. D. 1940.

JOS. E. WILSON
W. R. McQUAID
CLARENCE NUSSBAUM

70 STATE OF FLORIDA,
County of Bradford.

Before me, the undersigned authority, in and for the State of Florida, personally came and appeared Joseph E. Wilson, who, being by me duly sworn according to law, says upon his oath aforesaid, that he is one of the appraisers whose name is subscribed to the foregoing report of appraisers, and that he is entitled to compensation for making said appraisement, and that the attendance by him and the services rendered by him as such appraiser, and the making thereof, are as follows: 4 days attendance upon appraisal of real and personal property of the estate in the counties of Bradford, Clay and Duval, State of Florida as well as personal property in the District of Columbia: one day attendance in preparation and signing report of appraisers, and that the reasonable value of such services is the sum of $200.00.

JOS. E. WILSON

Sworn to and subscribed before me this 13th day of July, 1940.

ORIE A. WIGGINS
Notary Public, State of Florida at Large.

My Commission expires December 8th, 1940.

STATE OF FLORIDA,
County of Duval.

Before me, the undersigned authority, in and for the State of Florida, personally came and appeared W. R. McQuaid, who, being by me duly sworn according to law, says upon his oath aforesaid, that he is one of the appraisers whose name is subscribed to the foregoing report of appraisers, and that he is entitled to compensation for making said appraisement, and that the attendance by him and the services rendered by him as such appraiser, and the making thereof, are as follows: 2 days attendance upon appraisal of real and personal property of the estate in the counties of Bradford,

Clay and Duval, State of Florida as well as personal property in the District of Columbia; one day attendance
71 in preparation and signing report of appraisers, and that the reasonable value of such services is the sum of $200.

W. R. McQUAID

Sworn to and subscribed before me this 10th day of July, 1940.

LOUISE BELLE HIGBEE
Notary Public, State of Florida at Large.

My Commission expires July 21, 1942.

STATE OF FLORIDA,
County of Duval:

Before me, the undersigned authority, in and for the State of Florida, personally came and appeared Clarence Nussbaum, who, being by me duly sworn according to law, says upon his oath aforesaid, that he is one of the appraisers whose name is subscribed to the foregoing report of appraisers, and that he is entitled to compensation for making said appraisement, and that the attendance by him and the services rendered by him as such appraiser, and the making thereof, are as follows: eight days attendance upon appraisal of real and personal property of the estate in the counties of Bradford, Clay and Duval, State of Florida as well as personal property in the District of Columbia; one day attendance in preparation and signing report of appraisers, and that the reasonable value of such services is the sum of $400.00.

CLARENCE NUSSBAUM

Sworn to and subscribed before me this 12th day of July, 1940.

DAVID NUSSBAUM,
Notary Public State of Florida at Large.

My Commission expires May 17th, 1944.

The undersigned does hereby accept the foregoing
72 appraisement and adopts the same as the inventory of the assets of the estate of Charles F. Pace, deceased, and the undersigned does hereby consent to the approval and allowance of compensation applied for by the appraisers herein, as set forth in their foregoing affidavits.

ELIZABETH C. PACE
As Executrix of said Estate.

73 In the County Judge's Court in and for Bradford County, Florida.

STATE OF FLORIDA,
County of Bradford. ss.

I, E. K. Perryman, Judge of the County Judge's Court in and for Bradford County, Florida, do hereby certify that the above and foregoing constitutes a true and correct copy and literal transcript of Report of Appraisers as the same now appears of record and among the files of said Court.

And I further certify that the said County Judge's Court is a court of record with an official seal and that the Judge of said Court is the custodian of the records and of the seal of said Court, and that said Court has original jurisdiction of the settlement of the estates of decedents and minors, to take probate of wills, to grant Letters Testamentary and of Administration and Guardianship, and to discharge the duties usually pertaining to courts of probate, and that said Court has no Clerk.

Witness my hand and the seal of said Court, at Starke, Bradford County, Florida, this the 6th day of June, A. D. 1941.

E. K. PERRYMAN
Judge of the County Judge's Court in and for Bradford County, Florida.

74 "*Stipulation Exhibit F*"

STATE OF FLORIDA,
County of Duval.

Personally appeared before me, the undersigned authority, Elmer E. Hazard, who being first duly sworn deposes and says that he has been admitted to the Bar of the State of Florida, and has been actively practising before all the courts in the State of Florida, including the United States District Court, for seventeen (17) years last past and prior to the date of this affidavit.

Affiant says that he has examined the Constitution and law of the State of Florida with reference to Poll or Capitation Tax as a prerequisite for the right to vote in the State of Florida, and finds the following to be the only provision of the Constitution and Statutes relating to the same: Article VI, Section 8, of the Constitution of the State of Florida, 1885, provides as follows:

"Section 8. The Legislature shall have power to make the payment of the capitation tax, a prerequisite for voting, and all such taxes received shall go into the school fund."

Affiant further says that the above Constitutional provision has not been amended or repealed and is in full force and effect at the present time and has been in full force and effect since 1885.

Affiant further says that the above Constitutional provision has not been amended or repealed and is in full force and effect at the present time and has been in full force and effect since 1885.

Affiant further says that Section 215, Revised General Statutes, 1920, 248 Compiled General Laws, 1927, is as follows:

"248. (215) Who are qualified electors. — Every person of the age of twenty-one years and upwards, that shall at the time of registration be a citizen of the United States, and shall have resided and had his or her habitation, domicile, home and place of permanent abode in Florida for one

year, and in the county for six months; shall, if otherwise qualified according to law in such county, be deemed a qualified elector at all elections under the Constitution. Naturalized citizens of the United States, at the time of and before registration, shall produce to the registration officer their certificates of naturalization or duly certified copies thereof, and shall make oath that they are the identical person named in such certificates, before they shall be allowed to register: Provided, that the following classes of persons shall not be entitled to vote:

"First. Persons not duly registered according to law.

"Second. Persons under guardianship, including those kept in or confined in public prison.

"Third. Persons who are insane or idiotic.

"Fourth. Persons who may have been convicted of any felony by any court of record.

"Fifth. Persons who may have been convicted of bribery, perjury, or larceny, or of any infamous crime in any court of this State, or any other State, or interested in any bet or wager, the result of which shall depend upon any election, or that shall hereafter fight a duel, or send knowingly, carry or accept a challenge to fight, or that shall be a second to either party, or that shall be the bearer of such challenge or acceptance: but the legal disability shall not accrue until after trial and conviction by due form of law.

"Sixth. No person shall be permitted to vote at an election who shall have failed to pay, at least on or before the fourth Saturday preceding the day of such election, his or her poll taxes for the two years next preceding the year in which such election shall be held: Provided, that no person shall be prevented from voting on account of not having so paid a pool tax for any year which shall not have been lawfully assessable against him or her by reason of his or her not having been of age, or having been over fifty-five years of age, or who has lost a limb in battle, or who shall have

become disabled in the United States Army or Navy service, and who shall have procured and shall exhibit the certificate of the supervisor or registration to the effect as hereinafter provided for; and no person who became eligible to qualify as an elector in the year A. D. 1920, shall be prevented from voting because of not having paid a poll tax for that year: Provided, that no person who has not been in this State one year previous to any general election, shall be required to pay more than one year's poll taxes: Provided, that no person who has only been a resident of this State one year must first produce a poll tax receipt from the State from which they moved from, before being permitted to vote."

"Seventh. No person shall be permitted to vote, or shall such vote be counted, unless the person registers to vote in the election district in which he or she shall have his or her permanent place of residence."

Affiant further states that the above quoted law is also found in Chapter 4328, Section 1, Laws of Florida, 1895, as amended and reenacted by Chapter 8583, Section 1, Laws of Florida, 1921, and said laws are in full force and effect and have not been amended or repealed, except by Section
76 248 (1), Compiled General Laws, Permanent Supplement, 1940, Chapter 18061, Section 1, Laws of Florida, 1937, which is as follows:

"248 (1). Payment of poll tax not prerequisite to right to vote. — The payment of a poll tax shall not be required of any person, otherwise qualified as an elector, to vote at any primary, special, general or other election hereafter held in this State under the Constitution or any statutes passed in pursuance thereof."

Affiant further says that the last mentioned statute was enacted in 1937, and became in full force and effect on May 29, 1937, and its effect is to repeal by implication only that portion of the then existing statute, to-wit: 215 Revised General Statutes, 1920, 246 Compiled General Laws, 1927,

requiring the payment of a Poll or Capitation tax as a prerequisite to the right to vote in the State of Florida.

Further affiant says not.

(Signed) ELMER E. HAZARD

Sworn to and subscribed before me this 7th day of June, A. D. 1941.

(Signed) JEAN S. PATTERSON
Notary Public, State of Florida at Large.

(Seal)

My Commission expires Jan. 16, 1945.

"*Stipulation Exhibit G*"

Statement Regarding Taxes Paid to the District of Columbia by Charles F. Pace and Elizabeth C. Pace

CHARLES F. PACE

Income Tax

Income taxes for the calendar year 1939 in the amount of $150.73 were paid to the Collector of Taxes, D. C. The address of Mr. Pace was given as 1851 Columbia Road. No claim for refund on the basis of domicile was made to the Income Tax Division.

Personal Tax

	Intangibles Reported	Tax	Address
1937	$19,708.	$98.54	1539 Eye St., N. W.
1938	43,508.	217.54	1539 Eye St., N. W.
1939	36,452.	182.26	1851 Columbia Road

Miss Mary S. Pace, a sister of Charles F. Pace, died on January 15, 1938, while residing in the District of Columbia with her said brother and her sister, Elizabeth C. Pace, the petitioner herein; a return of property held jointly by the two sisters was filed with the Assessor, D. C., and an inheritance tax in the amount of $200.79 paid on account of such jointly held property. All correspondence with the

office of the assessor regarding the tax was carried on by Charles F. Pace (as "agent" for Elizabeth) and the tax was paid by said Charles voluntarily and without protest on February 15, 1938.

ELIZABETH C. PACE

Income Tax

Income taxes for the calendar year 1939 in the amount of $22.50 were paid to the Collector of Taxes, D. C. The address of Miss Pace was given as 1851 Columbia Road. No claim for refund on the basis of domicle was made to the Income Tax Division.

78 *Personal Tax*

	Intangibles Reported	Tax	Address
1939	$5,216.	$26.08	1851 Columbia Road

79 *"Stipulation Exhibit H"*

Oco Thompson, Financial Clerk
United States Senate
Disbursing Office
Washington

June 13, 1941

Board of Tax Appeals, District of Columbia,
Washington, D. C.

Gentlemen:

This is to certify that according to the official records of this office Charles F. Pace was appointed from Florida as a clerk in the United States Senate on March 21, 1913, on the recommendation of the late Senator Duncan U. Fletcher of that State, and served continuously from the aforesaid date to and including March 20, 1940, the date of his death, at which time he held the position of Financial Clerk of the Senate.

Respectfully,

OCO THOMPSON
Financial Clerk

HEALTH DEPT. D.C.
OFFICE

CERTIFICATE OF DEATH

1940 MAR 21 PM 3 46

DISTRICT OF COLUMBIA

1. PLACE OF DEATH
No. Haines Point - River Street, Section
Name of Hospital Duration of residence therein
2. FULL NAME Charles F. Pace
(a) Residence, No. 1851 Columbia Rd NW Street
(Usual place of abode) (If nonresident, give city or town and State)
Length of residence in D. of C. 27 yrs. mos. da. How long in U. S. if of foreign birth? yrs. mos. da.

PERSONAL AND STATISTICAL PARTICULARS

3. SEX: Male
4. COLOR OR RACE: White
5. SINGLE, MARRIED, WIDOWED, OR DIVORCED (write the word): Single
6a. If married, widowed, or divorced, HUSBAND of (or WIFE of)
6. DATE OF BIRTH (month, day, and year): 1876
7. AGE: Years 65 Months Days
8. OCCUPATION OF DECEASED
(a) Trade, profession, or particular kind of work: Financial Clerk
(b) General nature of industry, business, or establishment in which employed (or employer): Senate
9. BIRTHPLACE (city or town) (State or country): Stark, Florida
10. NAME OF FATHER (in full): George E. Pace
11. BIRTHPLACE OF FATHER (City or town) (State or country): Savannah, Georgia
12. MAIDEN NAME OF MOTHER (in full): Margaret Avery
13. BIRTHPLACE OF MOTHER (City or town) (State or country): Halifax, Nova Scotia
14. Above information furnished by: Philip von
Address: 311 S. Edgewood St Arlington Va
15. Relation of informant to deceased: Friend

MEDICAL CERTIFICATE OF DEATH

16. DATE OF DEATH (month, day, and year): Mar 20 40
17. I HEREBY CERTIFY, that I attended deceased from ... 19... to ... 19...
that I last saw h... alive on ... 19...
and that death occurred, on the date stated above, at ... m.
The CAUSE OF DEATH* was as follows:

(Duration) yrs. mos. da.
CONTRIBUTORY (SECONDARY)
(Duration) yrs. mos. da.
18. Where was disease contracted, if (Not) Other than residence?
Name of (Operation) Date
Was (there an autopsy)?
What laboratory tests confirmed diagnosis?
(Signed) M.D.
(Address)

* State the Disease Causing Death, or in Deaths from Violence Causes, State (1) Means and Nature of Injury, and (2) Whether Accidental, Suicidal, or Homicidal. (See reverse side for additional space.)

19. PLACE OF BURIAL, CREMATION, OR REMOVAL: Mt A Olivet Cemetery-Pat. Va. DATE: Mar. 23 40
20. UNDERTAKER: Martin W. Gleason & Co.
Address: 1300 N St. N.W.

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Washington, D. C. [redacted]

The foregoing is a true and correct copy of a certificate of death on file with the Health Department of the District of Columbia, and duly recorded in the records of said Department.

[redacted] M. D.
Asst.
Chief Clerk

81 Endorsed: Received and filed July 23 1941
Board of Tax Appeals for the District of Columbia

Board of Tax Appeals for the District of Columbia

Docket No. 456

DISTRICT OF COLUMBIA, *Petitioner*,

v.

ELIZABETH C. PACE, *Respondent*.

Petition of the District of Columbia for Review by the United States Court of Appeals for the District of Columbia of the Decision of the Board of Tax Appeals for the District of Columbia.

The District of Columbia, the petitioner in this cause, by Richmond B. Keech, Corporation Counsel, hereby files its petition for review by the United States Court of Appeals for the District of Columbia of the decision of the Board of Tax Appeals for the District of Columbia rendered June 26, 1941, determining that an inheritance tax in the sum of $605.15 was erroneously collected from, and should be refunded to, the respondent.

I

Petitioner is a Municipal Corporation.

II

Nature of the Controversy

(a) The controversy involves the domicile of Charles E. Pace, deceased, and the validity of the assessment and collection by the assessing and collecting authorities of the District of Columbia of an inheritance tax upon the transfer of the taxable portion of personal property held jointly by the respondent and said decedent.

(b) Charles F. Pace died a resident of the District of Columbia on March 20, 1940, at the age of 63 years. In 1913 said decedent was appointed to a position of clerk in the Congressional Library and came to reside in the District of Columbia. Shortly thereafter, he was
82 appointed Financial Clerk of the Senate of the United States, which position he held continuously until his death. At the time of his appointment to the federal service in 1913, the decedent sold the family homestead at Starke, Florida, and thereafter had no home or residence except the one which he continuously maintained in the District of Columbia until his death. Decedent, after his removal to the District of Columbia, continued to pay poll taxes and vote regularly, or at least frequently, in the Florida elections. Although the decedent had stated on several occasions that he was a resident of Florida, his will, dated July 12, 1937, states that he was "of the City of Washington, District of Columbia."

(c) Within the time prescribed by law the respondent filed an inheritance tax return with the Assessor showing that at the time of his death the decedent and the respondent were the joint owners or holders of accounts in a building and loan association and trust company, both in the District of Columbia, in the aggregate amount of $44,343.64. Thereafter, the Assessor assessed against the respondent an inheritance tax in the sum of $605.15 computed upon one-half of the amount of said joint accounts. On December 20, 1940, the respondent paid said tax to the Collector of Taxes of the District of Columbia under protest in writing, and appealed from said assessment to the Board of Tax Appeals.

III

The petitioner, being aggrieved by the findings of fact and conclusion of law contained in said findings and opinion of the Board of Tax Appeals, and by its decision entered in pursuance thereto, desires to obtain a review thereof by

the United States Court of Appeals for the District of Columbia.

s/ RICHMOND B. KEECH,
Corporation Counsel, D. C.

s/ VERNON E. WEST,
Principal Assistant Corporation Counsel, D. C.

s/ GLENN SIMMON,
Assistant Corporation Counsel, D. C.

83 DISTRICT OF COLUMBIA, ss:

Glenn Simmon, being duly sworn, says that he is counsel of record in the foregoing cause; that as such counsel he is authorized to verify the foregoing petition for review; that he has read the said petition and is familiar with the statements contained therein; and that the statements made are true to the best of his knowledge, information and belief.

s/ GLENN SIMMON,
Assistant Corporation Counsel, D. C.

Subscribed and sworn to before me this 23rd day of July, 1941.

ADAM A. GIEBEL,
(Seal) *Notary Public, D. C.*

My commission expires September 15, 1944.

Transcript of Testimony Taken at Washington, D. C., June 17, 1941

JO. V. MORGAN,
Member Sole.

GRAYCE McGRAW,
Reporter.

84 Before the Board of Tax Appeals for the District of Columbia

Docket No. 456

ELIZABETH C. PACE, *Petitioner*,

v.

DISTRICT OF COLUMBIA, *Respondent*.

Transcript of Testimony Taken at Washington, D. C., June 17, 1941

Now on this 17 day of June, 1941, the above-entitled proceeding came on to be heard pursuant to legal notice given to all parties, at which hearing petitioner was represented by George H. Happ, Esq., and George W. Thames, Esq.; respondent being represented by Gleam Simmon, Esq., and all parties announcing ready for trial, the following proceedings were had, to wit:

85 Mr. Happ: This is a petition filed as an appeal against the ruling of the Assessor in levying a tax upon property held jointly by the petitioner, Elizabeth C. Pace, and her late brother, Charles F. Pace, who died in the District of Columbia on March 20, 1940. The property was located in the District of Columbia and was intangible personal property, being deposits in banks and building associations.

By the Board: You claim that Mr. Pace was domiciled in the State of Florida at the time of his death?

Mr. Happ: Yes. There are a number of errors set forth in the petition and prior to the assessment The District Court of the United States for the District of Columbia, decreed that the said Charles F. Pace, departed this life a resident of the State of Florida.

By the Board: Do you contend that is binding on the District of Columbia?

Mr. Happ: It is conclusive, we contend. Of course, as I understand the statute, in order that jointly held property to be taxable it must have a taxable situs in the District

and the controlling element here is the question of domicile of the decedent, Mr. Pace. I think Mr. Simmon agrees that domicile is the controlling point in this case.

Mr. Simmon: Yes.

By the Board: You don't contend that the domicile of Miss Pace has anything to do with it?

Mr. Simmon: No.

86 By the Board: Do you agree that if it is found that Mr. Pace, the decedent, was domiciled in Florida there is no tax due and if he was domiciled in the District the tax is valid?

Mr. Simmon: That is conceded.

Mr. Happ: We both concede that. At this time both the petitioner-respondent will offer to the Board a stipulation by means of which we propose to save the Board a lot of work. The stipulation contains a number of exhibits which are to be received in evidence. Some of the exhibits are to be received in evidence merely for their worth; others are admitted as facts. The stipulation contains affidavits of residents of Florida, whose testimony would ordinarily have to be taken by means of depositions. We are stipulating that those affidavits be received in lieu of depositions. The Board is privileged to believe the witness or not believe the witness. Our prime purpose of the stipulation is to place this evidence before the Board and let the Board reach its own conclusions.

By the Board: As I understand it the affidavits were used in some other proceeding?

Mr. Happ: Yes.

By the Board: The District has agreed with you that if those persons were before the Board, either personally or by deposition, that they would testify to certain things?

Mr. Simmon: That is correct.

By the Board: You don't admit what they say is true?

Mr. Simmon: That is true, and there are certain things in those affidavits which have been lined out.

87 Mr. Happ: We have but one copy of the stipulation and we ask that we be permitted to supply the second copy.

By the Board: The stipulation will be marked as Exhibit "1" and received in evidence.

Mr. Happ: We had an understanding with Mr. Simmon that certain tax payments were made and no protest made at that time. That is part of the stipulation and in our agreement the petitioner questions the relevancy of one tax payment; we submit that to the Board and ask the Board to decide whether or not that one tax payment was relevant.

By the Board: What do you mean relevant?

Mr. Happ: There was a payment made and not made under protest, and as to its legal effect that is left to the Board. That was paid upon the estate of Mary Pace, who is now deceased and who is not a party to this proceeding.

By the Board: The stipulation includes a reference to judgment in another court, does it?

Mr. Happ: Yes. It contains a copy of the two judgments; the judgment to Transmit Will of the deceased to his domicile in Florida, and also another judgment, Petition for Ancillary Letters Testamentary to Miss Elizabeth C. Pace. I would like to put Miss Pace on the stand.

Miss Elizabeth C. Pace, petitioner herein, being first duly sworn on her own behalf, deposes and says:

Direct Examination

By Mr. Happ:

Q. State your name? A. Elizabeth C. Pace.

88 Q. You are the petitioner in this case? A. Yes.

Q. You are a sister of Charles F. Pace who died March 20, 1940? A. Yes.

Q. At the time of your brother's death I believe you owned certain property jointly with him which is described in the petition filed here? A. Yes.

By the Board: Is there any dispute as to the computation of the tax and the value of the property?

Mr. Happ: No.

Q. Where was your brother born? A. Jacksonville, Florida, October 21, 1877.

Q. Did there come a time when he removed from Jacksonville? A. Yes. The family moved to Starke, Florida. My parents moved down there and he moved with the family. Charlie was just a boy then. The whole family was born in Jacksonville. I was born in Jacksonville.

Q. When he moved to Starke was he under 21? A. Yes.

Q. Have you any relatives in Florida now? A. Yes, two nieces.

Q. Directing your attention to the year 1913 where were you at that time? A. In Washington studying music. My sister came here to be with me while I was studying.

Q. She was not employed? A. No.

Q. Nor were you? A. No.

89 Q. Was there any other change in 1913—did any other member of your family come to the District of Columbia? A. Yes, my brother came to accept a position at the Capitol.

Q. Just state if you know, the circumstances of his coming to Washington? A. He and Senator Fletcher were very close friends and he had done a lot of work for Senator Fletcher and the Senator told Charlie if he could ever do anything for him that all he had to do was to tell him so after the election of President Wilson he wrote to Charlie and told him he had a good position at the Capitol for him and asked him if he would accept it and Charlie thought he ought to take it because he thought it would be better for us all to be together and we discussed it.

Q. Did he accept it? A. Yes.

Q. What was he doing? A. He was in a bank at Jacksonville.

Q. He was employed? A. Yes.

Q. Do you know as an actual fact that he did accept the government position? A. Oh, yes.

Q. What was the position? A. When he went to the Capitol it was in the library and he was there only a short

time and they took him out and put him in the post office of the Capitol and he stayed there a few months and they offered him a position in the disbursing office as clerk and before he was there very long he was made assistant financial clerk and he stayed there for a while and then when Mr. Nixon died he was made financial clerk of
90 the Senate and held that until March 20, 1940.

Q. Miss Pace from 1913 when your brother came to Washington up to the time of his death in 1940 was there any lapse of employment by the United States Government? A. No, none at all.

Q. Was your brother a civil service employee? A. No, he was not—none of them were then, but I think they are all now.

Q. He held an appointee position? A. Yes.

By the Board: Did the Republican regime from 1921 to 1933 interfere with your brother's position?

A. No, not at all. In fact, I believe they were more anxious for him to stay than the others.

Q. It made no difference in his employment? A. No.

By the Board: It was dependent upon the party, or any senator changing or being elected?

A. No, it was a life position.

Q. Wasn't his salary raised during the Republican regime? A. Yes.

Q. Do you know whether or not your brother voted in the State of Florida during the whole time that he lived in the District of Columbia? A. I am quite sure he did.

Q. Did you vote in Florida? A. No.

Q. Why? A. I just don't believe in woman suffrage. I thought the men folks could take care of that.

91 Q. Did you ever have occasion to know that your brother returned to Florida to vote? A. Yes.

Mr. Simmon: Did you ever see him vote?

A. No.

Q. Did you ever see your brother mail an absentee ballot? A. Yes, on several occasions.

Q. Do you know if your brother, subsequent to 1913, took any active part in the political campaigns in Florida? A. Yes, a very active part in Senator Fletcher's campaign and also Senator Trammel.

By the Board: Did you know that?

A. Oh, yes, I know that, and Charlie went down there and he wrote letters and took them down.

Q. Miss Pace, I show you here for identification ten pieces of paper with printing and writing thereon and ask if you know what they are? A. They are receipts for poll tax.

Q. Have you seen them before? A. Yes, I found them in his papers.

Q. Were they all together? A. No, they were scattered.

Q. What disposition did you make of them? A. I gave them to you.

Q. Are they the same receipts? A. Yes.

Mr. Happ: I offer these receipts which are poll tax receipts from 1916 to 1925, in evidence.

Mr. Simmon: No objection.

By the Board: They will be marked Exhibits "2", "2a", "2b", "2c", "2d", "2e", "2f", "2g", "2h" and "2i".

92 Q. They are all the receipts you found? A. Yes.

Q. You don't know of any particular place where your brother kept such receipts? A. No, I just found them scattered around.

Q. Did your brother own real estate in the District? A. No.

Q. Did you? A. No.

Q. While your brother was living, at any time did there arise the question of purchasing a home in the District? A. Yes, on several occasions.

Q. From the time that you first came to the District and when your brother came in 1913, what type quarters have you occupied? A. We have always been in a boarding house or in an apartment.

Q. Rented quarters? A. Yes.

Q. You have never owned a house? A. No.

Q. Would you state to the Board the discussions that arose with regard to purchasing a home or real estate in the District? A. I had a brother who was vice rector at Catholic University and he wanted us to stay in Washington and on several occasions my sister looked at a home on 16 Street that she liked—that was Mary—but Charlie always opposed it and said he didn't want to buy a home in Washington because he was going back to Florida as soon as he left his place at the Capitol. On several occasions my brother who was at the University tried to persuade Charlie to build a home in Washington and Charlie said he was going back to Florida because the climate here was too hot for him and we just abandoned the idea
93 of building a home.

Q. Did he give any other reason than that the climate was too hot? A. He said he wanted to live in Florida.

By the Board: How old was he when he died?

A. Sixty-three.

By the Board: Did he ever tell you when he was going to retire?

A. No, because they wouldn't let him. He asked several times to resign and they asked him to stay longer.

Q. What was your brother's work? A. He was devoted to his work. That was one reason he didn't go to Florida to vote because he couldn't leave his work.

Q. But he did vote by absentee ballot? A. Yes.

Q. During the time that your brother lived in Washington did you have conversations with him, other than what you have stated, as to his intention of returning to Florida? A. Yes, he frequently talked over with me about going back. He used to say "Are you going to stay in the District when I go back or are you going back with me." Of course, I told him I wanted to go back with him.

Q. Did you ever discuss where you would live in Florida? A. Yes, he said St. Augustine or Jacksonville or Starke.

He asked me which I would like and I told him it didn't make any difference to me.

Q. Did there come a time when he refused an important public office, and if so, what did your brother say to you with reference to that refusal? A. Yes, just previous to Mr. McCall's leaving his office—he was comptroller general—the Senators had observed Charlie's work and thought he was especially fitted for that sort of work and they said "won't you let us present your name to the President for the position of Comptroller General?" Charlie said he would think about it but that he could give them his answer then. He talked it over with me and my sister and he said the position would be quite an honor with a very attractive salary, but he said as I have told you I am not going to make Washington my permanent home.

94

Q. Do you know of your own knowledge the tenure of office of the comptroller general? A. I think it is fifteen years—something like that.

Q. Did Mr. Pace while in Washington ever show any marked interest or attention to civic affairs in the District? A. No, he didn't. He contributed to the Community Chest because he thought he should but he didn't belong to any organizations.

Q. Did he belong to any clubs or associations? A. No.

Q. Did he ever show any marked interest—civic interest—for Starke, Florida? A. Yes, he did. He was always interested in civic affairs in Starke and frequently sent contributions down there and he contributed to the woman's club when that was being built.

Q. Of your own knowledge do you know if he continuously subscribed to Florida papers? A. Yes, the Jacksonville paper and the little paper at Starke.

Q. Did you frequently discuss with him matters of local interest as well as state interest in regard to Florida? A. Yes, he was always keeping up with everything.

Q. While your brother was in Washington you lived with him? A. Yes.

95 Q. Do you know if he was engaged in any business or enterprise other than his work at the Capitol? A. Nothing.

Q. Do you know if he was ever approached to interest himself in an active business in Washington? A. Yes, Mr. McNeill wanted him to go into the real estate business with him but he said no.

Q. Did your brother own real estate in Florida? A. Yes, a great deal of it.

Q. He owned property at Starke? A. Yes.

Q. Did he own that when he came to Washington. A. Yes.

Q. Did he purchase any adverse interest in that property subsequent to his coming to Washington? A. No, he he had owned it for years.

Q. Do you know as an actual fact if your brother maintained a small warehouse in Starke, Florida, upon a lot which he owned and in which he stored certain furniture? A. Yes, he had a great many things stored in that place, I saw them when I was there last summer.

Q. What did that consist of? A. A lot of furniture and all his law library, bedding and furniture.

Q. House furnishings? A. Yes, and treasures we had.

Q. Do you know if they were stored from the time he left Florida until his death? A. Yes.

Q. Did you ever discuss with him the purpose of storing it? A. He just wanted to have it there when we went back to live.

96 Q. You discussed that with him? A. Yes.

Q. He owned certan mortgages and had active investments in Florida? A. Yes.

Q. Did he maintain an active bank account in the State of Florida? A. Yes, in Jacksonville and in Starke too.

Q. At the time of his death did he still maintain a bank account in Florida? A. Yes.

Q. A checking account? A. Yes.

Q. If you know what was the approximate balance? A. I think it is on the list of one of those reports.

Q. Did you ever discuss with him the question of active business transactions in the District of Columbia or in Florida, why he made them in Florida and not in the District? A. Yes, he said he was not going to make this his permanent home and so why should he.

Q. Where is your brother resting now? A. In a vault here.

Q. Do you pay rent on it? A. Yes.

Q. What is your purpose? A. After the estate is settled I plan to take all their bodies back to Florida because all my people are buried there. I intend to bury them in Jacksonville in the family lot there.

Q. Miss Pace, I want to show you for identification three documents—An Exemplified Copy of the Last Will and Testament of Charles F. Pace; Order for Letters Testamentary and Letters Testamentary. Have you seen
97 those? A. Yes.

Mr. Happ: I now offer these documents in evidence.

Mr. Simmon: No objection.

By the Board: They will be marked Exhibits "3", "4", and "5".

Q. Miss Pace, do you know as an actual fact whether or not your brother purchased real estate in the State of Florida subsequent to coming to Washington? A. Yes, he bought all the property in Clay County.

Q. Do you know if he purchased property in Duval County? A. Yes.

Q. Have you seen his holdings as set forth in the stipulation report? A. Yes.

Q. You have seen that report? A. Yes.

Q. Miss Pace you have paid taxes in the District of Columbia? A. Yes.

Q. Let me ask you, do you consider yourself a resident of Florida or the District of Columbia? A. I guess I am a resident now but I may change my mind and move to Florida because my nieces and my friends are there, of course, I have friends here too.

Q. Up to the time of your brother's death did you have a continuing intention to return to Florida?

By the Board: She has already testified that her brother said he would go back and that she would have gone with him.

Q. Was it continuing? A. Oh, yes, I always knew I wanted to go back.

Q. You paid personal taxes and income taxes in the District? A. Yes.

98 Q. What was your purpose in so paying those taxes? A. Well, I was in the District and I thought I should pay them.

Mr. Happ: Before Mr. Simmon cross-examines I would like to put Mr. Schooley on. He has just come in.

By the Board: All right.

Witnessed Excused.

William E. Schooley, being first duly sworn on behalf of the petitioner herein, deposes and says:

Direct examination

By Mr. Happ:

Q. State your name? A. William E. Schooley.

Q. You are connected with the American Security and Trust Company? A. Yes. I am assistant vice president.

Q. In the course of your business connection with the American Security and Trust Company did you have occasion to meet Charles F. Pace? A. Yes.

Q. Did you have any business relations with Mr. Pace? A. Yes, I was personally acquainted with Mr. Pace, having met him through the office and he purchased and sold securities through me and for the period of the last five or six years I had made out his income tax return.

Q. The securities handled through you were they United States government issues? A. Yes.

99 Q. You made out his federal income tax returns?

A. Yes, and for the two years which there has been a District tax.

Q. Where did you forward those returns? A. To Baltimore.

Q. Directing your attention to the first time you had occasion to prepare a District income tax return for Mr. Pace, do you recall what year that was? A. It was the first year the law went into effect—1939, I believe.

Q. Prior to that time you prepared his federal returns? A. Yes.

Q. Did you discuss with him the question of the District income tax at that time? A. Yes.

Q. What was that discussion? A. The question there was that Mr. Pace had been appointed to federal service from the State of Florida. He told me at one time he was employed at a bank and had obtained this appointment which he thought was going to be a temporary matter. He received an offer to return to Florida in a bank in an official capacity. He had a letter with him at that time and showed it to me. He had been asked to take a position in a bank in Florida and he decided not to take it after talking with some of the Senators. Then the question came up about his paying the District income tax and at that time my interpretation of the act was that any one receiving his salary here in the District was subject to the income tax and I so advised him.

100 Q. Was his residence discussed at that time? A. Yes, he said he claimed his residence in Florida—claimed his legal residence in Florida.

Cross-examination

By Mr. Simmons:

Q. When did he get this letter to which you have referred, offering him a position in a bank in Florida? A. I would say five or six years prior to his death.

Q. What was the nature of the letter? A. It was written in long hand by a president of some bank. I think he had been in this bank before he came to Washington and he felt that if he would go back to Florida he could make more

money there and look after all his investments which were there. Mr. Pace stated to me that he thought he could make more money in Florida if he would return than he could make in Washington. He had extensive mortgages and real estate there.

Q. Did you offer any advice? A. No, sir.

Q. Did the letter state the salary? A. I don't recall that it did.

Re-direct examination

By Mr. Happ:

Q. Did he state definitely why he didn't accept the position? A. He said he talked with the senators on the hill and they thought he should continue on because he had been a public servant and in the service for so long.

Witness excused.

Miss Elizabeth C. Pace, heretofore duly sworn on
101 her own behalf, recalled for cross-examination:

Cross Examination.

By Mr. Simmon:

Q. Miss Pace, I don't think you stated when you came to Washington? A. I came here I think in 1910 or 1911. I was studying music.

Q. You came here for that purpose? A. Yes.

Q. Did your sister Miss Mary come for the same purpose? A. No, she came here just to be with me.

Q. Where did you reside at that time? A. The first year we lived on Rhode Island Avenue, 1405, and then later on Massachusetts Avenue near Thomas Circle. We lived in a boarding house.

Q. What was the character of your home in Florida at the time you left? A. A very beautiful home in Starke.

Q. A residence? A. Yes.

Q. Who was living there at that time? A. My brother Charlie and my sister and myself. My mother and father had died prior to that time.

Q. When Charlie came here in 1913 did you then all live together? A. Yes, we always did.

Q. What address was that? A. We were on 12 Street, I believe.

Q. Was that in a boarding house? A. Yes.

Q. You owned your home in Florida? A. We
102 sold it.

Q. Who owned it? A. My brother Charlie. My father left everything to him.

Q. He sold it when he came here in 1913? A. Yes. It was such a large place we didn't care to keep up such a large place and there were so many dear associations there that we did not want to go back in that house.

Q. What did he do with the furnishings? A. They were stored in this office that has been referred to here as a warehouse. He always called it his office.

Q. Did he own that building at that time? A. Yes.

Q. And he stored the furniture in that place? A. Yes, and his law library and all of those things. We didn't bring anything up here.

Q. What other property did he own in Starke at that time? A. Business property and stores.

Q. How many pieces of property did he own? A. Five stores, or six.

Mr. Happ: That is in the report in the stipulation.

Q. I show you Exhibit "1" which is a Stipulation, and to which is attached, Exhibit "E" which is a Report of Appraisers which lists certain property that Mr. Charles F. Pace owned at the time of his death. There are listed here three pieces of property in Bradford County, Florida. Will you state, if you know, whether or not he owned all those in 1913 at the time he came to Washington? A. Yes, he did.

Q. The first one listed there is in the Town of Starke?

A. Yes that is business property.

103 Q. And the others are in the Town of Starke? A. Yes, business property.

Q. Now there is one piece listed in Clay County—no, five pieces of property in Clay County? A. Yes, he had those.

Q. Did he own those at the time he left Florida in 1913? A. No.

Q. Can you tell which he did own? A. He bought most of those after he came here.

Q. You don't know which ones he did own? A. I don't think he owned any at the time he came here.

Q. Now in Duval County there are seven pieces of property. Do you know which of those he owned when he came here? A. I couldn't tell you, but I am sure he owned some of them when he came here.

Q. How did he acquire this real estate in Florida? A. Some of them he took mortgages on and then foreclosed and he had the property.

Q. Did he inherit some of them? A. In Starke he inherited it. The business property had been in the family for many years and before my father's death he made over everything to Charlie.

Q. Did he sell some real estate in Florida while he was here? A. Yes.

Q. Sold some and purchased other real estate? A. Yes.

Q. Have either you or Charlie at any time since 1913 had a home in Florida? A. No.

Q. Have you returned there frequently or at in-
104 tervals? A. I haven't been back there for very many times because I have been sick so much of the time since I have been in Washington.

Q. Do you know where Charlie stayed when he returned to Florida? A. He visited friends in Jacksonville and Starke and sometimes he would stay at the Winsor Hotel or another hotel.

Q. How large a town is Starke? A. About 1500. But it is booming now.

Q. You stated that in 1913 when Charlie came to Washington, one reason he came here was that he thought it would be better for the two girls and himself to be together.

Did he explain why? A. He was not making enough down there to take care of us and he thought it was better to be here on account of the salary.

Q. He was working in a bank in Florida? A. Yes.

Q. When did he accept the position of financial clerk of the Senate? A. About 1915 or 1916.

Q. I mean when was he made the financial clerk? A. Right after Mr. Nixon's death and that was about 1915 or 1916. Before the War.

Q. Do you know whether or not any property has been added to the furnishings and other personal property stored in the warehouse in Starke since 1913? A. No, nothing. Everything was there and I saw it last summer.

Q. The property that was there last summer is the same as was stored in 1913? A. Yes.

Q. How were his properties in Florida handled—
105 did he have an agent there who collected his rentals?
A. Yes, and he had his lawyers take care of them.

Q. Do you know how those matters were handled—whether or not the rentals were deposited in local banks or forwarded to him? A. I think they were taken care of by an attorney down there. I really don't know.

By the Board: Let the record show that it is agreed that the rentals from the property in Florida were deposited in local Florida banks by attorneys of the decedent.

Mr. Happ: Yes, we will agree to that.

Q. Did there come a time when you moved into an apartment in the District? A. Yes.

Q. When was that? A. 1914.

Q. And did you furnish it yourself or was it furnished? A. The first one was furnished.

Q. Did you later furnish one? A. Yes, later we did.

Q. Who owned the furniture? A. We all owned it.

Q. At the time of your sister's death how large an apartment did you have? A. Five rooms.

Q. Did you own the furniture there? A. Yes.

Q. Was Charlie a member of a church in the District? A. Oh, yes. We are Catholics.

Q. You were a member of a local church? A. Yes.

Q. And your other brother was at Catholic Uni-
106 versity? A. Yes.

Q. How long has he been in Washington? A. He died in 1938.

Q. Are there any other brothers and sisters? A. No, just the four of us.

Q. You referred to conversations you had had with Charlie from time to time regarding the building of a home in the District. Do you recall when those were? A. It was so frequent I don't know. But shortly after he took this position.

Q. After 1913? A. Yes, and my brother at the University was so anxious for us to stay but Charlie always said he did not intend making this his home.

Q. You first had such conversation shortly after 1915. Would that be correct? A. Yes—around 1916 or 1917.

Q. When did you next have such a conversation? A. About every year or so.

Q. What is the approximate value of Charlie's estate? A. I don't know.

Q. It was in any event sufficient so he could have returned to Florida at any time he liked? A. Yes.

Q. It was not dependent upon the salary he received from the Senate? A. No. On several occasions he wanted to resign but they wouldn't let him. They told him they wanted him to stay as long as he could stick it out.

Mr. Simmon: That's all.

Examination

107 By the Board:

Q. Did I understand you to say this was a life job? A. It would have been a life job. The Senators told him he could stay there as long as he wanted to.

Q. And he did stay as long as he lived? A. Yes.

Q. There was nothing compulsory about his staying there—that is, no one had anything against him to make him stay there? A. Of course not, no.

Q. Did he discuss with you the flattering offer he received from the bank? A. Yes.

Q. Did he explain why he did not take it when this offer was made? A. When the offer was made he discussed it with me. It was really a better salary than the one he was getting here.

Q. You mean his great desire to go back to Florida was overcome by the wish of the Senators that he remain here? A. It is pretty hard to turn down something like that when the Senators ask you to say for a while.

Q. When you "stay for a while" do you mean until he dropped in his shoes? A. He was very devoted to his work. He always felt it his duty to accede to the wishes of the Senators.

Q. When, in your mind, would the time come when he could throw aside that duty? A. I think when he became ill that time and wanted to resign. He said Senator or no Senator he was going to hand in his resignation.

Re-direct Examination

108 By Mr. Happ:

Q. Mr. Simmon was inquiring as to whether or not you had a home in Florida and why that was disposed of?

By the Board: She testified because it was too large and they didn't care to carry such a large home.

Q. When did you sell that house in Florida? A. When Charlie decided to leave.

Q. Did he dispose of the house in 1913? A. Yes.

Q. Mr. Simmon asked you certain questions with reference to the purchase of real estate in Florida and you mentioned that some was acquired by foreclosures on mortgages. Isn't it a fact that Mr. Pace actually purchased real estate after coming to Washington? A. Yes.

Q. Mr. Pace purchased more Florida real estate than he sold after coming to Washington, didn't he? A. Yes.

Q. Mention was made of Dr. Pace coming to Washington. Did Dr. Pace live here the whole time you were here? A. Yes, he was at the University since 1889.

Q. Was he in Rome for a while? A. Yes, he was educated there.

Mr. Happ: If the Board please, that is the petitioner's case.

Mr. Simmon: I wish to offer the death certificate of Mr. Pace.

Mr. Happ: There is no objection to its being received in evidence, with the exception of certain words thereon, namely, "jumped in river at Haines Point March 20, 1949." "Suicide." The words "melancholia—ill health" 109 and the word "drowning."

By the Board: The Board will disregard the description of the causes of death.

Mr. Simmon: I have no objection to that.

By the Board: The death certificate will be marked Respondent's Exhibit "A" and received in evidence.

Mr. Simmon: The purpose of this exhibit is to show that he determined his intention to return to Florida and that he died in the District of Columbia.

Reporter's Note: Exhibits "1", "2", "3", "4" and "5" on behalf of the petitioner and Exhibit "A" on behalf of the respondent appear in the original transcript on file with the Board of Tax Appeals for the District of Columbia, Room 313 District Building.

Before the Board of Tax Appeals for the
110 District of Columbia

Docket No. 456

Elizabeth C. Pace, *Petitioner*

v.

District of Columbia, *Respondent*

I, Grayce McGraw, Reporter for the Board of Tax Appeals for the District of Columbia, do hereby certify that the above and foregoing record is a true, complete and correct transcript of my shorthand notes taken of the pro-

ceedings before Jo. V. Morgan, Member Sole, on June 17, 1941.

In Witness Whereof, I have hereunto set my hand this 19th day of June, 1941.

GRAYCE McGRAW
Reporter

111 Endorsed: Received and Filed Aug 6 1941 Board of Tax Appeals for the District of Columbia

In the Board of Tax Appeals for the District of Columbia

DOCKET NO. 456.

DISTRICT OF COLUMBIA, *Petitioner*

v.

ELIZABETH C. PACE, *Respondent*

Designation of Record

To the Clerk of the Board of Tax Appeals:

You are hereby requested to prepare, certify and transmit to the Clerk of the United States Court of Appeals for the District of Columbia, with reference to petition for review heretofore filed by the petitioner in the above cause, a transcript of the record in the above cause, prepared and transmitted as required by law and by the rules of said Court, and to include in said transcript of record the following documents or certified copies thereof, to wit:

(1) Pleadings before the Board.

(2) Findings of Fact and Opinion of the Board of Tax Appeals.

(3) Decision of the Board of Tax Appeals.

(4) Petition for Review, with date of filing.

(5) Transcript of Testimony.

(6) Stipulation and exhibits filed with the Board.

(7) This Designation of Record.

RICHMOND B. KEECH,
Corporation Counsel, D. C.

VERNON E. WEST,
Prin. Asst. Corporation Counsel, D. C.

GLENN SIMMON,
Assistant Corporation Counsel, D. C., Attorneys for the Petitioner, District Building.

Dated this 4th day of August, 1941.

Service of the foregoing Designation of Record is hereby acknowledged this 5th day of August, 1941.

GEO. H. HAPP,
Attorney for the Respondent.

112 Board of Tax Appeals for the District of Columbia

DOCKET NO. 456

DISTRICT OF COLUMBIA, *Petitioner*

v.

ELIZABETH C. PACE, *Respondent.*

Certificate

I, Phyllis R. Liberti, Clerk of the Board of Tax Appeals for the District of Columbia, do hereby certify that the foregoing pages, 1 to 112, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Designation of Record in the Petition for Review in the appeal as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the Board of Tax Appeals for the District of Columbia this 11th day of August, 1941.

PHYLLIS R. LIBERTI,
Clerk, Board of Tax Appeals, D. C.

[fol. 130] IN UNITED STATES COURT OF APPEALS FOR DISTRICT OF COLUMBIA

Before Honorable D. Lawrence Groner, Chief Justice, and Honorable Justin Miller and Fred M. Vinson, Associate Justices

No. 8274

ELIZABETH C. PACE, Petitioner,

vs.

DISTRICT OF COLUMBIA, Respondent

MINUTE ENTRY—January 14, 1943

On motion of Mr. George H. Happ, Mr. Elmer E. Hazard of the Bar of the State of Florida was allowed to argue for petitioner pro hac vice by special leave of Court.

Argument commenced by Mr. Elmer E. Hazard, attorney for petitioner, continued by Mr. Glenn Simmon, attorney for respondent, and concluded by Mr. Elmer E. Hazard.

[fol. 131] IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 8274

ELIZABETH C. PACE, Petitioner,

v.

DISTRICT OF COLUMBIA, Respondent

On Petition for Review of Decision of the Board of Tax Appeals for the District of Columbia

Decided April 12, 1943

Mr. Elmer E. Hazard, of the Bar of the State of Florida, *pro hac vice*, with whom *Mr. George H. Happ* was on the brief, for petitioner.

Mr. Glenn Simmon, Assistant Corporation Counsel, D. C., with whom *Messrs. Richmond B. Keech*, Corporation Coun-

sel, D. C., and *Vernon E. West*, Principal Assistant Corporation Counsel, D. C., were on the brief, for respondent.

Before Groner, Chief Justice, and Miller and Vinson, Associate Justices

OPINION

VINSON, Associate Justice:

The sole issue we are called upon to determine, in reviewing the decision of the Board of Tax Appeals in this case, is whether Charles F. Pace was, at the time of his death, legally domiciled in Florida or in the District of Columbia. There is no dispute that Florida was his domicile of origin. He was born there and it had been the home of his family for several generations. The fact that the decedent left Florida and removed to, and lived in, the District of Columbia during the last twenty-seven years of his life raises the domiciliary question.

The decedent came to the District in 1913 to enter the Federal service. Two or three years later he became Financial Clerk of the Senate, and enjoyed that distinguished service continuously until his death here in 1940. The twenty-seven years of official service here, however, are material only to the issue of the waning of a will to return, for absenteeism alone does not operate to effect a change in domicile. The Supreme Court has recently reaffirmed the long-standing proposition that mere length of time devoted to the Federal service in the District is not enough, in itself, to deprive a Federal employee of his domicile of origin, and that the intention to leave the Federal employment and return to the territorial confines of one's domicile of origin need not be related to any definite date.[1]

Were it otherwise, the rule might act as a serious deterrent in the considerations of a state citizen, justly jealous [fol. 132] of his local affiliations, in contemplating Federal service in the District. There may be an inherent urge in man to retain allegiance to the state of his birth or choice

[1] District of Columbia v. Murphy, 314 U. S. 441, 455 (1941), reversing and remanding District of Columbia v. Murphy, 73 App. D. C. 347, 119 F. (2d) 451 (1941), and District of Columbia v. DeHart, 73 App. D. C. 345, 119 F. (2d) 449 (1941).

and to be possessed of the privileges and responsibilities that come with being domiciled in, and a citizen of, that state. Ofttimes it costs added dollars yearly to retain such privileges. Many will not suffer expatriation. Especially should this feeling be recognized in the District of Columbia where the battle for the rights that go with state citizenship has been waged through decades, and is particularly acute in this era. Being citizens of the United States is not sufficient for those who fight valiantly that citizens in the District of Columbia be raised to the level of citizens in the states, with the right to vote and thereby to participate actively in national and local government, and the right to possess all of the privileges valued by citizens in the states.

Clearly, then, as long as his Federal service continued, it is immaterial, in itself, whether the decedent's residence here lasted twenty-seven days, twenty-seven years, or even longer. However, the onus of demonstrating the continuing character of the state domicile has been placed upon the Federal employee.[2] He must carry the burden of proving that his residence here is of a transitory nature, as a convenience or necessity to, and roughly coterminus with, his Federal service.[3] The presumption of continuance of domicile of origin has given way to the counter-presumption of domicile in the territory in which one is resident until the contrary has been demonstrated. But it is open to the party whose domiciliary status is challenged to offer evidence of continuing affiliation with the state from whence he came to explain away the *prima facie* presumption which rises from his residence in the new political jurisdiction.

This review, therefore, merely poses the question whether those representing the decedent have carried the burden of showing that he intended to return to Florida at such time as he should decide to terminate his Federal service. In order properly to determine this question, we must examine with particularity the evidence relative to his intent:

Although the decedent sold the family homestead in Starke, Florida, when he left there, and had since owned no

[2] *Id.* at 456.

[3] But these rules are not appropriate alone to those who come here to enter the Federal service. See Beedy v. District of Columbia, 75 U. S. App. D. C. 289, 126 F. (2d) 647 (1942), *cert. not sought.*

home or other place of residence in Florida, his furniture and household goods were stored in a warehouse in that State maintained by him for this purpose, and they remained there until his death. During his twenty-seven years of residence in the District, the decedent lived in rented apartments and in boarding houses. He owned no real property here. At many times during his Federal service, he was urged by his brother and sisters, who had removed to the District earlier than the decedent, to purchase a home here, but he resisted their persuasion successfully, stating that he did not want to make his home in Washington, that he would return ot Florida at the termination of his Federal service. There was uncontradicted evidence that upon several occasions the decedent had expressed a desire to retire and return to Florida, but had been persuaded by his friends in the Senate not to do so. On one occasion, when his friends sought permission to urge his [fol. 133] appointment to another high governmental position, he requested them not to do so, explaining that he did not want to establish his home in the District.

When he left Florida in 1913, the decedent owned several pieces of real property in that State. From time to time during his service here, he acquired more. At the time of his death, he owned a number of business, residential, and farm properties in Bradford, Clay, and Duval counties in Florida, valued at approximately $30,000, and owned notes secured by Florida real estate in Clay and Duval counties, valued at over $28,000. His business affairs in Florida were handled through attorneys and agents there. The decedent owned also, at the time of his death, intangible assets valued in excess of $250,000, consisting largely of United States Treasury bonds and Consolidated Federal Land Bank bonds, which he kept with him in the District of Columbia. At that time he had a substantial sum on deposit in an active bank account in Florida, namely, $8,416.79, while in a bank in the District he had a deposit of $189.32.

At all times the decedent was registered and qualified to vote in the State of Florida. He exercised this right either in person or by absentee ballot. In voting by absentee ballot, it was necessary that he take oath that he was a legal resident of Florida. Throughout the years he paid the

Florida poll tax. This was a prerequisite for voting until 1937.[4]

The decedent did not belong to any civic or social clubs in the District, but he did become a member of a local church. However, in oral argument counsel for the respondent expressly agreed that no weight or significance as affecting domicile should be attached to this church membership. The evidence shows that the decedent had no marked interest in District affairs. On the other hand, it was demonstrated without contradiction that he had a very active interest, throughout his Federal service, in the local affairs, both civic and social, of Starke, Florida. He subscribed to the Starke newspaper. He contributed to civic and charitable institutions there, making the largest single donation to the upkeep of Crosby Lake Cemetery, in which a family burial lot was located. He corresponded with citizens of Starke, discussed their problems, and assisted in solving them.

In 1937, 1938, and 1939, the decedent paid District of Columbia intangible personal property taxes, amounting to $8.54, $217.54, and $182.26, respectively. Through the years he filed his Federal income tax returns with the Collector of Internal Revenue at Baltimore, Maryland, explaining this to be the custom of many Federal employees. An Assistant Vice-President of the American Security and Trust Company here testified that in 1939 he discussed with the decedent the question of the District income tax, and advised him that under his interpretation of the Act anyone receiving a salary here in the District was subject to the income tax. He testified further that on that occasion the decedent claimed his legal residence in Florida. The bank official then prepared and the decedent filed his return, paying a District income tax for 1939 amounting to $150.73.

The decedent's will, dated July 12, 1937, began with the statement: "I, Charles F. Pace, of the City of Washington, District of Columbia * * *." [Italics supplied] He died in the District on March 20, 1940. After his death, the will [fol. 134] was deposited with the Register of Wills in the District. The record shows, however, that upon motion of the petitioner it was transmitted by the District Court to the Clerk of the County Court for Bradford County, at

[4] Fla. Comp. Gen. Laws (1937) § 248(1), Perm. Supp. (1940) c. 18061, § 1.

Starke, Florida, for probate. The will was probated in Florida. Thereafter the District Court here, sitting in Probate, granted ancillary letters testamentary to the petitioner as executrix.

Other minutiae might be stated, but we believe the foregoing sets out the evidence necessary to present the domiciliary issue. The controversy began in this wise: The petitioner paid the Assessor, under protest, an inheritance tax assessed upon the transfer to her of certain intangible property of District situs formerly owned jointly with the decedent. She then appealed the assessment to the Board of Tax Appeals, on the ground that the decedent had been domiciled in Florida at the time of his death.

The Board of Tax Appeals, after hearing argument, determined that the decedent was domiciled in Florida at the time of his death, and ordered a refund of the tax paid. The District of Columbia then appealed to this court, but afterwards presented a motion, which was granted,[7] to remand the action to the Board of Tax Appeals for reconsideration in the light of the intervening decision of the Supreme Court in *District of Columbia* v. *Murphy*.[8] It was stipulated by the parties that the evidence adduced at the original hearing be considered as the evidence upon rehearing. The Board, upon reconsideration, adopted as its findings of fact the findings made in respect of the original hearing, except as to the nature of the decedent's intention to return to Florida upon the completion of his Federal employment. In its original opinion, the Board had stated that "whatever intention he had of returning to his former home was floating, and dependent on an event [terminating his Federal employment] which might not, and, in fact did not occur." It is apparent that in its original determination, the Board reluctantly held Florida to be the decedent's domicile, doing so only because it felt bound by the decisions of this court. The Board stated that:

> If the decedent had been employed in private industry or profession and had not been a Federal employee, the Board would not hesitate to rule that he was domiciled in the District of Columbia at the time of his

[7] District of Columbia v. Pace, No. 8007, judgment entered February 12, 1942.

[8] 314 U. S. 441 (1941).

> death. * * * The decedent, however, was a Federal employee and claimed a legal residence in Florida and voted regularly therein. Such being the case the Board, under the decisions of the United States Court of Appeals in Sweeney v. District of Columbia, 72 App. D. C. 30, 113 F. (2d) 25; District of Columbia v. Murphy, —— App. D. C. ——, 119 F. (2d) 451 and District of Columbia v. DeHart, —— App. D. C. ——, 119 F. (2d) 449, concludes as a matter of law that at the time of his death the decedent was not domiciled in the District of Columbia.

In its second and final opinion, however, the Board concluded as follows regarding the evidence relevant to the intent to return:

> The evidence adduced has not, in the mind of the Board, produced the belief that the decedent during [fol. 135] his residence in the District of Columbia *always had a fixed and definite intent to return* and take up his home in Florida when he should have been separated from the Federal service, and for that reason the Board cannot find that the decedent has *overcome the presumption, arising from his maintaining a home in the District*, that he was domiciled therein. [Italics supplied]

Thereupon, the Board reversed its former ruling and held the decedent to have been domiciled in the District. Obviously, however, the nature and degree of the intent attributed to the decedent was the same on each hearing. The Board's right-about-face was predicated upon the Supreme Court opinion in *District of Columbia* v. *Murphy*,[7] implicitly relied upon the Board as changing the rule regarding the determination of domicile. The appropriate words in the *Murphy* opinion are as follows:

> The place where a man lives is properly taken to be his domicile until facts adduced establish the contrary. * * * The taxing authority is warranted in treating as *prima facie* taxable any person quartered in the District on tax day whose status it deems doubtful. It is not an unreasonable burden upon the individual, who

[7] *Ibid.*

knows best whence he came, what he left behind, and his own attitudes, to require him to establish domicile elsewhere if he is to escape the tax.[8]

We held in *Beedy v. District of Columbia*,[9] however, that the *Murphy* case did no more than shift to the individual quartered in the District the burden of proof to establish domicile elsewhere—that the traditional substantive standards of the domiciliary concept remained unaltered. The District admitted this in oral argument before us. It is proper, therefore, that we determine, upon this review, whether the requisite burden has been sustained. A domiciliary determination involves a compound consideration of fact and law, and we are privileged to review the legal effect attached to the evidence before the Board.[10]

We have taken pains to square carefully the status of the decedent with the considerations mentioned by the Supreme Court as being relevant to a proper answer to the question of domicile, which considerations, as we understand them, are in no wise expressed by way of limitation. We believe that the petitioner has favorably shown, as regards the decedent, "whence he came", "what he left behind", and "his own attitudes" in the premises. The record indicates that the decedent's employment required his presence here. In the beginning his position was political in character. His high post was held at the will of the Senate. It has been demonstrated that he kept closely in touch with the election booths in Florida throughout the years. He persistently refused to acquire a "home" in the District. He did not bring his household goods with him to the District. All of his investments in realty, and the vast preponderance [fol. 136] of his bank deposits, were situated in Florida. He belonged to no clubs, lodges, social or civic groups in the District of Columbia—and this cannot be attributed to misanthropic leanings, for the record demonstrates that the decedent was socially-minded and generous as regards his friends and neighbors in Florida. Florida had long been

[8] 314 U. S. at 455.

[9] 75 U. S. App. D. C. 289, 126 F. (2d) 647 (1942), *cert. not sought*.

[10] Sweeney v. District of Columbia, 72 App. D. C. 30, 32, 113 F. (2d) 25, 27 (1940), *cert. denied*, 310 U. S. 631 (1940).

his family seat. He was not a "bird of passage". Throughout his long service here, he had never severed the "threads of close association" with his friends in Florida. His many declarations as to his intent to return to his domicile of origin and his attitude toward the District leave no doubt in this regard. These statements are persuasive to us because they were made throughout his Federal service, and at such times and under such circumstances that there was no occasion for them to be self-serving. Many of them were made before there was any tax problem involved or contemplated. The circumstances under which he paid income tax in the District of Columbia lend little weight to the side of District domicile. He had been advised by the bank official with whom he conferred that anyone receiving a salary here in the District was subject to the income tax; and upon that very occasion the decedent again maintained that his legal residence was in Florida.

The facts submitted to the District Court, sitting in Probate, led it to conclude that "Charles F. Pace, deceased, departed this life a resident of the Town of Starke, Bradford County, State of Florida * * *", and it ordered his will transmitted to the Clerk of the appropriate court in that State. A few weeks later the District Court in effect redetermined the question of domicile when it granted ancillary letters testamentary to the petitioner. Although not conclusive, these orders are entitled to weight.

We are of the opinion that the record discloses that the Board erroneously concluded on rehearing that the decedent had failed to overcome the presumption, arising from his "living" in the District, that he was domiciled therein. The petitioner amply sustained the requisite burden of proof that the decedent maintained his domicile in Florida. We expressly bottom our conclusion upon the opinion of the Supreme Court in *District of Columbia* v. *Murphy*.[11]

Reversed and remanded.

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[11] 314 U. S. 441 (1941).

[fol. 137] In United States Court of Appeals for District of Columbia, April Term, 1943

No. 8274

Before Honorable D. Lawrence Groner, Chief Justice, and Honorable Justin Miller and Fred M. Vinson, Associate Justices, in Chambers

Elizabeth C. Pace, Petitioner,

vs.

District of Columbia, Respondent

Petition for Review from the Board of Tax Appeals for the District of Columbia

Decree—April 12, 1943

This cause came on to be heard on the transcript of the record from the Board of Tax Appeals for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decision of the said Board of Tax Appeals in this cause be, and the same is hereby, reversed with costs, and that this cause be, and it is hereby, remanded to the said Board of Tax Appeals for further proceedings not inconsistent with the opinion of this Court.

Per Mr. Justice Vinson.

Dated April 12, 1943.

[fol. 138] [File endorsement omitted]

In United States Court of Appeals for the District of Columbia

[Title omitted]

Designation of Record—Filed April 28, 1943

The Clerk will please prepare a transcript on application for certiorari to the Supreme Court of the United States in the above-entitled cause, including therein the following:

1. The Appendix to Petitioner's Brief;
2. Minute entry showing argument of cause;

3. Opinion of the Court;
4. The judgment or decree;
5. This Designation;
6. Clerk's certificate.

(S.) Richmond B. Keech, Corporation Counsel, D. C.; (S.) Vernon E. West, Prin. Asst. Corporation Counsel, D. C.; (S.) Glenn Simmon, Assistant Corporation Counsel, D. C., Attorneys for Respondent, District Building.

Service of a copy of the foregoing Designation of Record acknowledged this 26th day of April, 1943. (S.) Geo. H. Happ, Attorney for Petitioner.

[fol. 139] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 140] In Supreme Court of the United States

Stipulation as to Record

It is hereby stipulated and agreed by and between the parties hereto, by their respective counsel,

1. That the Petition may be considered upon appendix to the brief of the respondent, as supplemented by the proceedings in the United States Court of Appeals for the District of Columbia;

2. That the original Transcript of Record be lodged here;

3. That in the event the Petition for a Writ of Certiorari is granted, counsel will then stipulate as to the material parts of the original record to be printed.

Richmond B. Keech, Corporation Counsel, D. C.; Vernon E. West, Prin. Asst. Corporation Counsel, D. C.; Glenn Simmon, Assistant Corporation Counsel, D. C., Attorneys for the Petitioner; Geo. H. Happ, Attorney for Respondent.

[fol. 141] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 11, 1943

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Black and Mr. Justice Rutledge took no part in the consideration or decision of this application.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No.

DISTRICT OF COLUMBIA,

Petitioner,

v.

ELIZABETH C. PACE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF

RICHMOND B. KEECH,
Corporation Counsel, D. C.,
VERNON E. WEST,
Principal Assistant Corporation Counsel, D. C.,
GLENN SIMMON,
Assistant Corporation Counsel, D. C.,
Attorneys for Petitioner.

DIVISION OF PRINTING—GOVERNMENT OF THE DISTRICT OF COLUMBIA

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No.

DISTRICT OF COLUMBIA,

Petitioner,

v.

ELIZABETH C. PACE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF

Petition

To the Honorable, the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioner, the District of Columbia, respectfully shows and represents unto Your Honors that:

Statement of Matter Involved

Section 1 (a) of Article I of Title V of the District of Colum-

bia Revenue Act of 1937 [1] imposes a tax upon all real property and tangible and intangible personal property, or any interest therein, having its taxable situs in the District of Columbia, transferred from any person who may die seized or possessed thereof. Section 6 of Article I of said Title, as amended,[2] provides that returns of jointly held and other property not under the control of a personal representative shall be made within six months after the death of the decedent, and the tax on the transfer of such property is required to be paid within nine months after the date of the death of such decedent. Returns of other property are required to be made by the personal representative within fifteen months after the death of the decedent, and the tax on such transfers is required to be paid within eighteen months after the death of the decedent.

Charles F. Pace died a resident of the District of Columbia on March 20, 1940, leaving intangible personal property held jointly with the respondent, Elizabeth C. Pace, in the amount of approximately $44,000.00 (R. 21), real estate owned individually and located in Florida having a value of approximately $30,000.00 (R. 81-84), and intangible personal property owned individually having a value at the time of his death of approximately $279,000.00 (R. 85-94).

On November 20, 1940, Elizabeth C. Pace, the respondent and surviving sister of the decedent, filed with the Assessor, D. C., a return of the intangible personal property held jointly with the decedent (R. 19-22), and on December 20, 1940, paid to the Collector of Taxes, D. C., the tax assessed on the basis of such return (R. 23). On March 17, 1941, the respondent filed a petition with the Board of Tax Appeals for the District of Columbia alleging that the assessment was erroneous for the reason that the decedent was not domiciled in the District of Columbia at the time of his death, and praying that the amount of the taxes paid be refunded (R. 13-18). The Board

[1] 50 Stat. 683, rewritten and other sections amended in the Act approved July 26, 1939, 53 Stat. 1111, Section 47-1601, D. C. Code, 1940.
[2] 53 Stat. 1113, Section 47-1606, D. C. Code, 1940.

of Tax Appeals, following the decisions of the United States Court of Appeals for the District of Columbia in the *Sweeney*[3], *Murphy*[4], and *DeHart*[5] cases held "as a matter of law" that at the time of his death the decedent was not domiciled in the District of Columbia, and that respondent was entitled to a refund of the taxes paid (R. 27-35). The District of Columbia petitioned the Court of Appeals for a review of the Board's decision (R. 105-107). At the time the District's petition was filed with the Court of Appeals, the *DeHart* and *Murphy* cases were pending in this Court and the time for filing of briefs in the Court of Appeals was extended until after this Court's decision in such cases. Thereafter, upon motion of the District, this case was remanded to the Board of Tax Appeals for further proceedings in conformity with the opinion of this Court in the *DeHart*[6] and *Murphy*[7] cases. On rehearing the Board found as a fact that decedent did not have a fixed and definite intent to return and take up his home in Florida when he should have been separated from the Federal service; that the evidence adduced was not sufficient to overcome the presumption that the decedent was domiciled in the District where he maintained his only home; and that decedent was domiciled in the District of Columbia at the time of his death. The Board therefore held that respondent was not entitled to a refund of the inheritance taxes paid (R. 2-4). Respondent petitioned the Court of Appeals for review of the Board's decision (R. 5-8). The Court of Appeals reversed the decision of the Board of Tax Appeals and held that decedent was not domiciled in the District at the time of his death (R. 131-136).

Jurisdiction

The judgment of the United States Court of Appeals for the

[3] *Sweeney* v. *District of Columbia*, 72 App. D. C. 30, 113 F. (2d) 25.
[4] *District of Columbia* v. *Murphy*, 73 App. D. C. 317, 119 F. (2d) 451.
[5] *District of Columbia* v. *DeHart*, 73 App. D. C. 345, 119 F. (2d) 449.
[6] *District of Columbia* v. *DeHart*, 314 U. S. 441.
[7] *District of Columbia* v. *Murphy*, 314 U. S. 441.

District of Columbia was entered on April 12, 1943. The jurisdiction of this Court to issue the writ applied for is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

Questions Presented

1. Whether the Court of Appeals may substitute its judgment for that of the Board of Tax Appeals when the Board's findings are supported by substantial evidence.

2. Whether a person may have a state-wide domicile, or whether domicile must be fixed at a definite place.

3. Whether decedent, Charles F. Pace, was domiciled in the District of Columbia for purposes of inheritance taxation at the time of his death.

Reasons Relied on for the Allowance of the Writ

The Court of Appeals has not given proper effect to applicable decisions of this Court.

The questions here presented are of great importance to the District of Columbia and the several states and to all individuals residing therein.[3] The District of Columbia Income Tax Act levies a tax upon the income of individuals "domiciled" in the District and the District of Columbia Inheritance and Estate Tax Law levies a tax upon transfers from the estate of every individual who dies a resident of the District. The importance of the question is not limited to liability for payment of taxes, but extends to matters relating to the administration of estates, the granting of divorces, and the like.

WHEREFORE, Your petitioner prays the allowance of a writ of certiorari to the United States Court of Appeals for the District of Columbia in this cause, and entitled *Elizabeth C. Pace*

[3] This is particularly true in view of the decentralization of so many Federal departments.

Petitioner v. *District of Columbia, Respondent*, No. 8274; that said cause may be reviewed and determined by this Court, and that the judgment of the said Court of Appeals may be reversed and set aside; and for such further relief and remedy in the premises as this Court may deem meet and proper.

DISTRICT OF COLUMBIA,
Petitioner.

By: RICHMOND B. KEECH,
Corporation Counsel, D. C.,

VERNON E. WEST,
Principal Assistant Corporation Counsel, D. C.

GLENN SIMMON,
Assistant Corporation Counsel, D. C.,
Attorneys for the Petitioner,
District Building.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

Opinions Below

The opinion of the Board of Tax Appeals for the District of Columbia (R. 2-4) is not reported. The opinion of the United States Court of Appeals for the District of Columbia (R. 131-136) is not yet reported.

Jurisdiction

The grounds upon which the jurisdiction of this Court is invoked are stated in the petition.

Statement of the Case

The primary question presented in this case is the domicile of Charles F. Pace at the time of his death on March 20, 1940. Said decedent came to the District of Columbia in 1913 and continuously resided in said District until the date of his death.

Decedent had one brother and two sisters, all of whom were born in Jacksonville, Florida (R. 111). After the birth of decedent the family removed to Starke, Florida (R. 111). Decedent's brother came to the District of Columbia in 1889 (R. 125), and, except for a short time during which he was receiving education in Rome, he remained in the District until his death in 1938 (R. 124, 125). Both parents of the decedent had died prior to 1910, leaving all the family property to decedent (R. 121). At that time decedent and his two sisters were living at the family home in Starke (R. 120). Decedent's two sisters,

one of whom is the respondent herein, came to the District of Columbia in 1910 or 1911, the respondent, Elizabeth, to study music, and her sister, Mary, to be with her (R. 120). In 1913 the decedent sold the family home in Starke (R. 121), gave up his employment in a bank located in that town (R. 111), and came to the District of Columbia to accept a position in the Library of Congress (R. 111). The furnishings in the Florida home were stored in an office or warehouse which the decedent owned in Starke (R. 116, 121). No changes were made in the property so stored (R. 123), and upon the death of Charles F. Pace such property was appraised at no value (R. 92).

Upon coming to the District in 1913 the decedent took quarters with his two sisters in a boarding house and so resided until some time in 1914 (R. 121, 123). Thereafter, decedent and his two sisters resided in apartments in the District of Columbia, the first one being a furnished apartment and the later ones being furnished with furniture owned by the decedent and his two sisters (R. 123).

Besides the position in the Library of Congress to which he was appointed upon coming to the District, the decedent held positions in the Post Office of the Capitol and as a clerk in the Disbursing Office of the Senate (R. 112). In 1915 or 1916 he was made Financial Clerk of the Senate (R. 123), which position he retained until the time of his death (R. 112).

At the time of his death, decedent owned a number of parcels of real estate situated in Florida of the value of approximately $30,000.00 (R. 81-84). Some of these parcels were acquired by inheritance and others by purchase or foreclosure of mortgages either before or after coming to the District of Columbia (R. 116, 122). Such properties were managed by agents located in Florida and the rentals from such properties were deposited in local Florida banks by attorneys of the decedent (R. 123). The decedent owned at the time of his death the following intangible personal property: Notes secured by mortgages on Florida real estate in the approximate amount of $27,000.00 (R. 85-92); deposits in The Atlantic National Bank of Jack-

sonville, Florida, in the approximate amount of $8,400.00 (R. 92); stocks and bonds located in the District of Columbia in the approximate amount of $240,000.00 (R. 92, 93); and an account in the American Security and Trust Company, Washington, D. C., in the approximate amount of $189.00 (R. 93). In addition to the above-described property owned individually by the decedent, there was on deposit in banks and a building association in the District of Columbia more than $44,000.00 in the name of Charles F. Pace or Elizabeth C. Pace, or survivor (R. 21).

Decedent regularly paid his poll taxes and voted either in person or by absentee ballot in elections in the State of Florida (R. 112, 113). His sister, the respondent herein, did not vote in such elections (R. 112).

Five or six years prior to the death of the decedent he received, but declined to accept, an offer of a position in a bank in Florida which would have paid a higher salary than that which he was receiving as Financial Clerk of the Senate (R. 119-120, 125).

Decedent and the other members of his family were members of a church in the District of Columbia (R. 123-124).

Decedent had a substantial estate and was not dependent upon the salary which he received as Financial Clerk of the Senate (R. 124). He could have returned to Florida at any time he desired. The decedent, together with the other members of his family, remained and made his only home in the District from and after 1913. The decedent died in the District of Columbia (R. 103) and his remains, together with those of the brother and sister who predeceased him, are buried in a vault in the District of Columbia (R. 117). The decedent regularly filed returns of his intangible property with the Assessor of the District of Columbia and paid taxes thereon (R. 101.) The District of Columbia Income Tax Act imposes a tax upon the income of individuals domiciled in the District of Columbia (53 Stat. 1087). The decedent reported his income for the calendar year 1939 to the Assessor of the District of

Columbia and paid a tax thereon without protest (R. 101).

Miss Mary S. Pace, a sister of the decedent, died on January 15, 1938, while residing in the District of Columbia with said decedent and the respondent herein. A return of personal property held jointly by the two sisters was filed with the Assessor, District of Columbia, and an inheritance tax in the amount of $200.79 was paid on account of such jointly held property. All correspondence with the office of the Assessor regarding the tax was carried on by Charles F. Pace, and the tax was paid by said decedent voluntarily and without protest on February 15, 1938 (R. 101-102). The respondent, Elizabeth C. Pace, reported to the Assessor of the District of Columbia intangibles owned by her on July 1, 1938, and paid a tax thereon for the fiscal year ended June 30, 1939. Said respondent also reported her income for the calendar year 1939 and paid a tax thereon to the Collector of Taxes, District of Columbia, without protest, and no claim for refund thereof has been made (R. 102). Said respondent considers herself a resident of the District of Columbia (R. 117).

The last will and testament of Charles F. Pace, the decedent, states that he is "of the City of Washington, District of Columbia" (R. 74).

Specification of Errors

The United States Court of Appeals for the District of Columbia erred:

1. In substituting its judgment for that of the Board of Tax Appeals when the Board's findings were made in accordance with the principles of law announced by this Court and are supported by substantial evidence;

2. In holding, in effect, that a person may have a domicile within a state without fixing such domicile at a definite location therein;

3. In holding that the decedent, Charels F. Pace, was not domiciled in the District of Columbia for purposes of taxation on March 20, 1940.

Statutes Involved

Section 1, Article I, Title V, of the District of Columbia Revenue Act of 1937,[9] provides, in material part, as follows:

> "Taxes shall be imposed in relation to estates of decedents, the shares of beneficiaries of such estates, and gifts as hereinafter provided:
>
> "(a) All real property and tangible and intangible personal property, or any interest therein, having its taxable situs in the District of Columbia, transferred from any person who may die seized or possessed thereof, either by will or by law, or by right of survivorship, and all such property, or interest therein, transferred by deed, grant, bargain, gift, or sale (except in cases of a bona fide purchase for full consideration in money or money's worth), made or intended to take effect in possession or enjoyment after the death of the decedent, or made in contemplation of death, to or for the use of, in trust or otherwise (including property of which the decedent has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from such property or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom), to the * * * brothers and sisters of the whole or half blood of the decedent shall be subject to a tax as follows: 3 per centum of so much of said property as is in excess of $2,000 and not in excess of $25,000; 4 per centum of so much of said property as is in excess of $25,000 and not in excess of $50,000; 6 per centum of so much of

[9] See Note 1, page 2 hereof.

said property as is in excess of $50,000 and not in excess of $100,000; 8 per centum of so much of said property as is in excess of $100,000 and not in excess of $500,000; 10 per centum of so much of said property as is in excess of $500,000."

Section 2 of said Article and Title [10] provides as follows:

"The tax provided in section 1 shall be paid on the market value of the property or interest therein at the time of the death of the decedent as appraised by the assessor or, in the discretion of the assessor, upon the value as appraised by the probate court of the District. The taxable portion of real or personal property held jointly or by the entireties shall be determined by dividing the value of the entire property by the number of persons in whose joint names it was held."

Summary of Argument

The facts in this case clearly show that decedent was domiciled in the District of Columbia at the time of his death, and the Board of Tax Appeals so held. The Board's conclusion was reached by applying to the facts of this case the principles of law prescribed by this Court. The Board's finding is supported by substantial evidence and should not have been reversed by the Court of Appeals.

The primary principle of law applicable to this case is that "in order to retain his former domicile, one who comes to the District to enter Government service must always have a fixed and definite intent to return and take up his home there when separated from the service." The evidence in this case clearly shows that decedent had no fixed and definite intent to return and take up his home in the place of his former domicile, and the Board of Tax Appeals properly so held. This is the second case [11] since the decision of this Court in the Murphy and DeHart cases in which

[10] 53 Stat. 1112, Section 47-1602, D. C. Code, 1940.

[11] See *Beedy* v. *District of Columbia*, 75 App. D. C. 289, 126 F. (2d) 647.

the Court of Appeals has disregarded the findings of the Board with respect to intention to return to the place of former domicile. This practice of the Court of Appeals in substituting its own judgment for that of the fact-finding administrative agency is contrary to law, and should not be permitted to be continued.

The Court of Appeals apparently takes the view that although decedent had no fixed and definite intent to return to the place of his former domicile (Starke, Florida), an intention to return to some other place in the State of Florida is sufficient to retain domicile in that State. Domicile must be at a definite, particular place. Decedent here did not have a fixed and definite intent to return to any place within the State of Florida, but even if it could be said that he had an intention to return or remove to one of several towns within that State, that would not be sufficient to retain his former domicile. His former domicile was at Starke, Florida. To retain that domicile it must be clearly established that he had a fixed and definite intent to return to that place.

Argument

I

Decedent, Charles F. Pace, was domiciled in the District of Columbia at the time of his death on March 20, 1940.

In its opinion in *District of Columbia* v. *Murphy*, *supra*, this Court stated a number of the pertinent facts to be considered and announced certain principles of law to be applied to such facts in determining domicile. It is the view of the petitioner that the application of the legal principles announced in the *Murphy* case to the pertinent facts in this case clearly establishes that decedent was domiciled in the District of Columbia at the time of his death. Therefore, petitioner desires to discuss the facts in this case which are pertinent in the determination of the domicile of the decedent.

(a) Reasons for coming to the District of Columbia, and manner of living therein

Decedent, Charles F. Pace, was one of four children, all of whom were born in Jacksonville, Florida (R. 111). Some time after decedent's birth, the family moved to Starke, Florida (R. 111). In 1889 decedent's only brother left the family home and came to the District of Columbia where he remained (except for a short period when he was studying in Rome) until his death in 1938 (R. 125-126). Both the decedent's parents had died prior to 1910 (R. 120). At that time decedent was employed in a bank in Starke, and was living there in the family home with his two sisters, Elizabeth and Mary (R. 120). In 1910 or 1911 decedent's two sisters left the family home in Florida and came to the District of Columbia, where they resided continuously thereafter until the death of Mary in 1938, and where Elizabeth, the respondent herein, still continues to reside. In 1913, the decedent sold the family home in Florida and came to the District of Columbia to live with his two sisters, and he continued to reside in the District from 1913 until his death in 1940, during all of which period he had no home at any other place (R. 122).

Upon coming to the District, decedent and his two sisters lived for a short while in a boarding house. In 1914 they moved into a furnished apartment. Sometime thereafter, they moved to an apartment which was furnished with their own furniture (R. 123). At the time of Mary's death, they lived in a five-room apartment furnished with equipment which they owned (R. 123).

While the salary which decedent was to receive in the District of Columbia may have been a consideration, it appears that the primary reason for his coming to the District was to be with his sisters. The respondent testified that they had discussed his coming to Washington and "he thought it would be better for all of us to be together" (R. 111). However, they all could have been together in Florida as well as in the Dis-

trict. They had a "very beautiful" home in Starke (R. 120). Although decedent had a position in a bank there, he had a substantial estate and was not dependent upon his salary (R. 124). Apparently, he could have resided wherever he chose. The two sisters were not employed, and their residence likewise was a matter of choice.

(b) Relations to former place of abode

Decedent was registered and qualified to vote in Starke, Florida. He exercised this right either in person or by absentee ballot. Apparently, the only active part he took in any political campaigns in Florida subsequent to 1913 was in those of Senators Fletcher and Trammell (R. 113). He subscribed to both the Starke and Jacksonville papers. In 1939 he contributed $20.00 to the upkeep of Crosby Lake Cemetery, located in Starke (R. 57). The Court of Appeals refers to this cemetery as one "in which a family burial lot was located" (R. 133). The record, however, discloses that all of decedent's "dear ones" with the exception of one aunt, Mrs. Hoyt, are interred either in the District of Columbia or in Jacksonville, Florida (R. 59).[12] In his letter of August 26, 1939, forwarding the first of his donations to the cemetery, decedent says "as my aunt, Mrs. Hoyt, is buried there in our lot, I feel an interest in keeping up the burial ground" (R. 60) [13]. While the respondent testified that decedent made other contributions to organizations in Florida, no amounts are stated, and only the "woman's club" was mentioned (R. 115). The general testimony relating to decedent's interest in Florida affairs and contributions to Florida organizations, like the other testimony of the respondent, is, of course, self-serving, and subject to the infirmity of all such declarations. Decedent carried on

[12] The letter appearing on page 59 of the Record is reprinted at page 2a of the Appendix hereto.

[13] The letter appearing on page 60 of the Record is reprinted at page 3a of the Appendix hereto.

some correspondence with persons in Florida, the bulk of which apparently pertained to the property which he owned there.

At the time of his death, decedent owned a number of pieces of real property in Bradford, Clay, and Duval counties in Florida, valued at approximately $30,000.00, and notes secured by real property in Clay and Duval counties valued at approximately $28,000.00. This property was managed by decedent's agents or attorneys in Florida, and the rentals therefrom were deposited in The Atlantic National Bank of Jacksonville, Florida (R. 41, 92, 123). At the time of his death there was on deposit in such bank the sum of $8,416.79. A savings account which he formerly had in such bank was withdrawn about five years prior to his death (R. 41, 42). Much of the Florida real estate and all of that located in Bradford County was inherited by the decedent from his father (R. 121-122). Other property he acquired by foreclosure of mortgages (R. 122). He acquired no additional property in Bradford County, where his former home was located, after 1913, and at the time of his death he owned no mortgages on property located in that county (R. 121). He also owned some household goods and other personal effects which were stored in a warehouse in Starke. No additions were made to such property in storage after 1913 (R. 123) and at the time of decedent's death such property had no value (R. 92). In a letter which decedent wrote on December 5, 1939, to W. R. McQuaid, President of The Barnett National Bank of Jacksonville, Florida, decedent stated that the income from his Florida property was almost nothing, and with respect to the property at Starke, he says: "The property at Starke is old, and I pay more in repair bills, taxes, insurance, etc., than I get out of it. Can't sell it—just drag along from sentiment and force of habit" (R.45) [14].

It should be observed that although the property located in Florida was held in the name of the decedent, it was property

[14] The letter appearing on page 45 of the Record is reprinted at page 1a of the Appendix hereto.

which apparently belonged to the entire family. When decedent's father died, the family estate was not divided among the children but the entire estate was transferred to decendent (R. 122) apparently with the understanding that he should manage the property and share the proceeds with his sisters. He supported his sisters until his death.

Decedent had not been in the State of Florida for a number of years prior to his death (R. 42, 73). He was not a member of any club, lodge, church, or other organization in Florida. He was a member of a church in the District of Columbia (R. 123). Although this Court, in the *Murphy* case, specifically mentions relationship with churches as a relevant fact in the determination of domicile, the Court of Appeals held that no weight or significance as affecting domicile should be attached to decedent's church membership (R. 133). The Court attempts to avoid the responsibility for its holding by saying that counsel for respondent expressly agreed that no weight should be attached to church membership in the District. Counsel for respondent abandoned argument on this point only after the presiding judge had announced the view that no significance should be attached to the fact of church membership in the District of Columbia.

The Court of Appeals says that decedent corresponded with citizens of Starke, discussed their problems, and assisted in solving them (R. 133). The record discloses, however, that the purpose of his correspondence with persons in Florida was to solve his own problems. Except for his contribution to the cemetery, there is no evidence of his having assisted in solving the problems of anyone in Starke. Likewise, his subscribing to the Starke and Jacksonville papers is explained by the fact that he desired to keep in touch with his investments in those localities.

(c) Property and investments

The real property located in Florida and the notes secured

by Florida real estate which decedent owned are referred to in the preceding section of this brief. As previously pointed out, all the property in Bradford County wherein is located the place of decedent's former domicile, Starke, was inherited by decedent, and he had purchased no property in that county. Apparently, decedent desired and had tried to dispose of the property which he owned in Starke, but was unable to find a purchaser (R. 45).

Decedent owned at the time of his death intangible assets consisting of United States Treasury Bonds, Federal Land Bank Bonds, and stocks valued in excess of $240,000.00 (R. 92, 93), the certificates for which were held in the District of Columbia. In the account with The Atlantic National Bank of Jacksonville where rentals from his Florida property were deposited by his agents he had on deposit $8,416.79 (R. 92), and in the American Security and Trust Company in the District he had on deposit $189.32 (R. 93). The Court of Appeals emphasizes the disparity between these two accounts by stating that he had "a substantial sum on deposit in an active bank account in Florida, namely, $8,416.79, while in a bank in the District he had a deposit of $189.32" (R. 133), and then by stating that "the vast preponderance of his bank deposits were situated in Florida" (R. 135 and 136). The Court omits any reference to the fact that at the time of his death there was on deposit in the American Security and Trust Company and the Perpetual Building Association in the District in the joint names of the decedent and respondent amounts totaling $44,343.64 (R. 21). It is the tax upon decedent's interest in these joint accounts which is involved in this proceeding. Decedent also owned cash located in the District in the amount of $1,117.34 (R. 93) and an interest in the furniture and personal effects located in the apartment occupied by decedent and respondent.

(d) Payment of taxes

The District of Columbia Income Tax Act is applicable to the taxable year 1939 and subsequent taxable years. It imposes a tax upon the income of individuals domiciled in the District of Columbia on the last day of the taxable year. The decedent reported to the Assessor, D. C., his income for the calendar year 1939, and paid a tax thereon in the amount of $150.73. Such tax was paid voluntarily and no claim was made that deeedent was not domiciled in the District of Columbia on December 31, 1939 (R. 101). The Court of Appeals says that the circumstances under which he paid the District income tax lend little weight to District domicile for the reason that he had been advised by a bank official that any one receiving his salary in the District was subject to the income tax (R. 136). In brushing aside the significant fact of payment of District income taxes, the Court of Appeals overlooks two pertinent considerations. Decedent was a lawyer (R. 72) and was certainly better qualified to interpret the District Act and the term "domicile" than a layman. The advice of the bank official (R. 119) to the effect that anyone receiving his salary in the District was subject to the tax was so obviously erroneous that no one who had ever been near a law school would have been gulled by it. Secondly, Mr. Pace was employed by the Senate and was well acquainted with most, if not all, of the members of that body. It is only reasonable to believe that his connection there provided him with some knowledge of the legislative history and interpretation of the Act. If he had no such knowledge and desired an interpretation of the Act, he certainly would have inquired of some of his friends at the Capitol. It may be that decedent had some conversation with this bank official, but it is inconceivable that he relied entirely upon such advice in filing his District return and paying a tax upon his income. It might be observed, further, that the language of the District Income Tax

Act and its interpretation was widely publicized in the local papers prior to the time decedent's 1939 return was filed.

Decedent paid taxes to the District of Columbia upon his intangible personal property for the years 1937, 1938, and 1939 in the amounts of $98.54, $217.54, and $182.26, respectively (R. 101). The Court of Appeals recites this fact but apparently attaches no significance to it. These taxes also were paid voluntarily, and without any question being raised as to decedent's liability therefor. The laws of Florida, in effect during such years and for many years prior thereto, levied taxes upon the intangibles of residents of that State [15]. There is no evidence that decedent ever paid any taxes to the State of Florida upon his intangibles. If any such payments had been made, they certainly would have been referred to in the affidavit of the Tax Collector of Bradford County, which was introduced in evidence (R. 55). It is significant that the decedent could have avoided payment of the District tax upon his intangibles by submitting to the Assessor evidence that he had paid taxes upon such personal property to another jurisdiction.[16]

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[15] It appears that laws of the State of Florida have imposed taxes upon intangible personal property at least since 1895. Section 1, of Chapter 4322, of the Acts of 1895, imposed taxes upon all property, real and personal, in the State. Section 3 of said chapter defined the term "personal property" to include "all goods and chattels, moneys and effects, all boats and vessels, whether at home or abroad, all debts due or to become due, from solvent debtors, whether on account, contract, note or otherwise, on public stocks or shares in all incorporated or unincorporated companies."

Chapter 15789, General Laws of the State of Florida, 1931, further defined and classified intangible personal property for purposes of taxation. This Act divided the intangible personal property subject to taxation into three classifications: (A) all stocks or shares of incorporated or unincorporated companies, all bonds (except Federal, State, and municipal); (B) all notes, bonds, and other obligations for the payment of money which are secured by mortgage, deed of trust, or other leases or liens upon real or personal estates situated in Florida; (C) all other intangible personal property. The rate of taxation of intangible personal property in the first two classifications was two mills on the dollar of taxable value, while the rate on property in class (C) was one-tenth of a mill.

[16] The Act of July 3, 1926, 44 Stat. 833, Section 47-1205, D. C. Code, 1940, provides that no intangible tax shall be imposed upon property if the owner thereof submits evidence to the Assessor, D. C., satisfactory to him that such intangible personal property or the income thereof is taxed in said personal property or the income thereof is taxed in some other jurisdiction.

The decedent's sister, Elizabeth, the respondent here, also reported to the Assessor, D. C., her income for the calendar year 1939, and paid a tax thereon in the amount of $22.50 (R. 102). This payment was made voluntarily, and no claim was made of domicile without the District of Columbia. Since the decedent managed the financial affairs of his sisters, it is a reasonable inference that this tax was paid on the advice of the decedent, who considered his sister to be domiciled within the District of Columbia on December 31, 1939. Elizabeth also voluntarily paid taxes to the District of Columbia upon intangible personal property for the fiscal year 1939 (R. 102). The opinion of the Court of Appeals omits any mention of the payments of these taxes.

The decedent's sister, Mary, died on January 15, 1938, while residing in the District of Columbia with her brother, Charles, and sister, Elizabeth. A return of property held jointly by the two sisters was filed with the Assessor, D. C., and an inheritance tax in the amount of $200.79 was paid on account of the transfer of Mary's interest in such jointly held property. All the correspondence with the office of the Assessor regarding this tax was carried on by the decedent, and the tax was paid by said decedent voluntarily and without protest (R. 101, 102). Obviously, the decedent considered Mary to have been domiciled in the District at the time of her death. The Court of Appeals likewise omits any reference to this fact.

(c) Transmission of will to Florida

The will of the decedent was filed with the Register of Wills of the District of Columbia. Upon petition of the respondent herein, the District Court ordered the will transmitted to the Clerk of the County Court for Bradford County, Starke, Florida (R. 64, 65). The Court of Appeals takes the view that this amounts to a determination by the District Court that decedent was domiciled in Florida.

At the time the petition of the respondent to transmit the will of the decedent to Florida was filed, it was the practice of the District Court to grant such petitions upon the statements contained therein, and without notification to the District.[17]

In the first place, the District Court could not have made a determination that decedent was domiciled in Florida for the reason that it did not have before it, and consequently did not consider, the facts necessary for such a determination. Secondly, the District received no notice of the petition to transmit the will; it was not a party to such proceeding, and certainly cannot be bound by any decision therein.

(f) Statements respecting domicile and intention to return to place of former abode

The last will and testament of the decedent began "I, Charles F. Pace, of the City of Washington, District of Columbia," Although it is generally held that a recital in a will as to the domicile of the testator is evidence of his domicile at that time, and even of his domicile at the time of his death where his death soon followed,[18] the Court of Appeals attaches no significance to the fact.

In addition to the two letters written by decedent to Mrs. Vida V. Morgan at the time he made donations to the Crosby Lake Cemetery (R. 59, 60), there was also introduced in evidence five other letters written by or to the decedent prior to his death. Two of these letters were written by decendent (R. 45, 69)[19] to W. R. McQuaid, President of The Barnett

[17] This practice has since been changed, and petitioners are now required to obtain the consent of District authorities or give the District an opportunity to contest the claim of domicile without the District before a will is transmitted to another jurisdiction.

[18] 1 *Beale, Conflict of Laws*, Paragraph 41B9; *Kennan on Residence and Domicile*, Paragraph 87. Dr. Kennan states (page 179): "Certainly there are few if any written declarations which can raise stronger presumptions as to the testator's purpose and intention." In *Ward* v. *Oxford* (1829), 8 Pick (Mass.) 476, Justice Baker observed: "The designation of his residence in a solemn instrument such as a deed or a will, is in the nature of a fact rather than a declaration, being made when there is no controversy, and where no possible interest could exist to give a false designation."

[19] Letters appearing on pages 45 and 69 of the Record are reprinted on pages 1a and 4a, respectively, of the Appendix hereto.

National Bank of Jacksonville, Florida, and three (R. 66, 71, 74) were written by McQuaid to the decedent. This correspondence was introduced for the purpose of showing that decedent had made a statement in his letter of December 5, 1939 (R. 45) that he was a *citizen* of Florida. An affidavit of the said McQuaid was introduced in evidence in which it is stated that the declaration of citizenship was made by the decedent "freely and voluntarily and not on the advice of, or at the request of, affiant" (R. 43). The record, however, discloses that the statement regarding citizenship was inspired by Banker McQuaid, who considered the decedent to be domiciled in the District of Columbia, and was trying to induce decedent to change his domicile to Florida so as to avoid District inheritance taxes and to give McQuaid's bank the business of handling decedent's estate. In McQuaid's first letter of November 27, 1939 (R. 66, 67), he refers to prior correspondence in which he suggested the inability of decedent's sister to manage the estate in the event decedent should predecease her, and proposed that decedent come to Florida and discuss with McQuaid the matter of creating a trust for her. Although decedent made no response to McQuaid's suggestion in his reply of November 29, 1939 (R. 69), McQuaid, in his letter of December 2, 1939 (R. 71, 72, 73) again raised the question. In this letter, McQuaid states:

> "Of course, you could provide for a trust, having the Barnett National Bank act as trustee for your sister without the bank being named as executor. I presume you are now a resident of the District of Columbia and are filing your income tax returns there. I notice the District of Columbia has an inheritance tax, and on an estate of approximately $300,000 this would amount to about $20,000; whereas this amount would be saved if you establish your residence in Florida. This should not be difficult as you own so much property in Florida and I presume the District of Columbia is more lenient than are the states in per-

mitting employees of the Government who reside all the time in the District to maintain their residence in the state from which they came, by filing income tax returns and voting in these states. Of course, if you did not wish to make Florida your residence by going to the trouble of coming down here to vote in the general elections, and wish to retain your residence in the District and be subject to the inheritance tax, you could, as I suggested to you in 1938, make me a co-executor so that I, as executor, could handle your estate as a resident of the District of Columbia. All compensation, however, to go to the Barnett National Bank and to be so provided in your will. You have probably considered all these things and determined just what you want to do. Since you raised the question with me once, I am taking the liberty of again making these suggestions to you.

"Why don't you follow my suggestion and come down and discuss this with us, and at the same time go into the question of your property holdings, both here and at Starke, which you have not seen for a number of years? * * *"

In his reply of December 5, 1939 (R. 45), decedent states "I am a citizen of Florida and vote there regularly. My voting place is Starke but have paid my income tax at Baltimore where many Federal employees here pay. Will change to Jacksonville as you suggest." It is interesting to note that decedent merely claimed *citizenship* in Florida. He was a lawyer and must be presumed to have known the difference between citizenship and domicile, yet nowhere in this record is there any evidence that he ever claimed a "domicile" in Florida. It is also interesting to note that although he told McQuaid that he would file his Federal income tax returns in Jacksonville, his last return, filed in 1940, was filed with the Collector of Internal Revenue at Baltimore, Maryland (R. 119). The only inference to be drawn from this fact is that he had decided not to follow McQuaid's advice, and not to attempt to change his domicile to Florida.

The other statements regarding decedent's domicile and intention to return to Florida are: (1) that of Harold C. Wall, insurance agent in Starke, Florida, who stated in an affidavit (R. 40, 41) that he had received a letter from decedent several years prior to his death in which decedent stated that when he retired from his position with the Senate he would return to his home in Starke, Florida; (2) that of William E. Schooley, Assistant Vice President of the American Security and Trust Company; that at the time of the conversation with decedent regarding his liability for payment of District of Columbia income taxes, decedent said that he claimed his legal residence in Florida (R. 119); and (3) the testimony of respondent that decedent did not buy a home in the District for the reason that he intended to return to Florida when his service with the Senate was terminated (R. 114, 115). While decedent had a sentimental attachment for the State of Florida, he never claimed "domicile" in that state. The statement of Mr. Wall that decedent said he would return to Starke to live is negatived by the testimony of respondent that he said he would go to either St. Augustine, Jacksonville, or Starke. The statements of the respondent regarding the decedent's intention to return to Florida are self-serving, and entitled to little, if any, weight. Furthermore, all of these alleged statements regarding decedent's domicile in Florida are inconsistent with his acts.

(g) Domicile in the District of Columbia

The entire record in this case shows that decedent considered himself, as well as the other members of his family, to be domiciled in the District of Columbia, and made no effort to retain his domicile in Florida. Although the opportunity was presented on numerous occasions, he never claimed domicile in Florida, although it would have been to his advantage to do so. He paid his income and intangible taxes

to the District, although he could have escaped the income tax entirely and could have been relieved of the intangible tax by payment of less than half as much taxes on his intangibles in Florida. He paid inheritance taxes to the District upon the transfer of his sister Mary's estate because he considered her domiciled in the District, although such taxes could have been avoided if she had been domiciled in Florida. No act of the decedent indicates that he ever intended or desired to retain his Florida domicile. No claim was ever made that the decedent or his brother or either of his sisters was domiciled without the District until after his death, when the respondent realized that payment of a substantial amount of inheritance taxes could be avoided if domicile could be established in Florida instead of the District.

Decedent came to the District to be with his sisters and his brother, all of whom had previously come to reside in the District. He maintained his only home in the District for the twenty-seven years preceding his death. He refused to return to Florida when a position was offered him there paying a higher salary than the one he was receiving in the District (R. 125). He had a substantial estate and was not dependent upon his salary earned in the District. Although he could have returned at any time he elected to remain in the District until the end.

The decedent and his brother and sister who predeceased him are interred in a vault in the District. Although the respondent testified that she intended to remove the three bodies to the family lot in Jacksonville, the decedent never expressed any wish to be buried in Florida, and apparently considered the burial places of his brother and sister in the District to be permanent. In his letter of September 16, 1939, to Mrs. Morgan, he said that he had little interest in the cemetery at Starke for the reason that all of his dear ones were interred in the District of Columbia or in Jacksonville (R. 594). In that solemn instrument, his last will and testament, he

stated that he was "of the City of Washington, District of Columbia."

Even if we should disregard all of the evidence favorable to District domicile and consider the evidence submitted by the respondent in its most favorable light, decedent was still domiciled in the District of Columbia. The controlling principle which this Court announced in the *Murphy* case, and which the Court of Appeals completely ignores, is whether decedent had a fixed and definite intent to return and make his home at the place where he was formerly domiciled, namely, Starke, Florida. Respondent does not even contend that he intended to return and make his home either at the place, or within the same county, where his former domicile is located. He had no fixed intent to return to any particular place in Florida, but apparently had considered the possibility of living in one of three towns located in that State. A general intention to return to some locality within the State of former abode is not sufficient to meet the test laid down by this Court.

II

The Court of Appeals erred in substituting its judgment for that of the Board of Tax Appeals when the Board's findings were made in accordance with the principles of law announced by this Court and are supported by substantial evidence.

The question of whether decedent was domiciled in the District at the time of his death is a question of fact to be determined by the Board of Tax Appeals—of course, by the application of the proper legal principles.[20] This Court clearly so

[20] The ascertainment of a domicile of choice has been variously described as a "*conclusion* or *inference* the law derives from the fact of a man fixing voluntarily his sole or chief residence in a particular place, with the intention of continuing to reside for an unlimited time" (Lord Chancellor Westbury in *Udny* v. *Udny* (1869), L. R. 1 *Scotch & Divorce*, 441, 458); "a legal conclusion drawn from a series or network of facts"; "a shorthand method of expressing a number of legal consequences which result from certain facts" (Professor Fowler V. Harper, 19 *Pennsylvania Bar Association Quarterly*, 213.

held in the case of *District of Columbia* v. *Murphy*.[21] The Board of Tax Appeals found that the decedent was domiciled in the District at the time of his death. In reaching such conclusion the Board properly applied the legal principles an-

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Note [20]—Continued.

216) It has nearly always been held, however, by the better considered cases that the solution of a domicile of choice, as distinguished from one fixed by law, is, as says Dr. Farnsworth, "a pure question of fact—just as residence—to be determined, of course, by the application of proper legal principles" (*Farnsworth, The Residence and Domicil of Corporations*, page 42); "In other words 'domicil' is a legal concept while 'home' is a factual one from which the legal is in greater or less measure derived" (Kuhn, *Comparative Commentaries on Private International Law or Conflict of Laws*, page 67); "'Home' is not a term of art. It is a fact." (Mr. Surrogate Fowler in *Matter of Rutherford*, 88 Misc. 414, 417); "If therefore the question of acquisition in fact of a domicil of choice has been left to a jury, and there is sufficient evidence to support the verdict reached, and the court refuses a new trial, a higher court cannot (should not?) reverse the action of the trial court", says Professor Beale, Paragraph 15.1. See also, *Matter of Martin*, 255 N. Y. 359, affirming 229 App. Div. 772 and 136 Misc. 51; *New York Life Insurance & Trust Company* v. *Viele* (1899), 161 N. Y. 11, 19; *Bassett* v. *Wheeler* (1881), 84 N. Y. 466, 467; *Matter of Trowbridge* (1935), 266 N. Y. 283, 194 N. E. 756; *Commonwealth* v. *Davis*, 284 Mass. 41, 187 N. E. 33. Judge Vann, in *Matter of Newcomb*, 192 N. Y. 238, 250, remarked in the year 1908 as to domicile: "The question is one of fact rather than law, and it frequently depends upon a variety of circumstances, which differ as widely as the peculiarities of individuals."

Two recent cases from the English, and one from the Irish court of last resort, have passed squarely upon the subject, when the factual findings were made only by administrative officials and not by judges or juries after a full trial at law. See: *Inland Revenue Commissioners* v. *Lysaght* (1928) A. C. 234, 246 (House of Lords); *Levene* v. *Inland Revenue Commissioners* (1928) A. C. 217; and *Iveagh* v. *Revenue Commissioners* and *Revenue Commissioners* v. *Iveagh* (1930), Irish Reports 431. The two English cases held that the determination of "residence" for purposes of taxation was a question of fact, to be determined by administrative officials and cannot be reviewed unless it is made out to be based on some error of law. Although the question of taxing residence examined in the two English cases was somewhat less than domicile, still, the method of investigation of the subject was the same, namely, days in England, clubs, friends, property, bank accounts, abodes, etc. That is to say, the term "residence", for tax purposes, may contain many of the elements of the term "domicile".

The Irish case held that domicile for purposes of taxation was a question of fact. The Commissioners, in the *Iveagh* case, like the Board of Tax Appeals in the *Murphy* and *DeHart* cases, had based their determination of fact upon an erroneous view of the law. Mr. Chief Justice Kennedy made practically the same disposition of the *Iveagh* appeal as this Court did of the *DeHart* and *Murphy* appeals by remanding the case to the administrative officials for fact-finding under the law as expressed in the court of last resort.

[21] 314 U. S. 441.

nounced by this Court in the *Murphy* case. Nowhere in its opinion does the Court of Appeals even suggest that the Board failed to apply the proper legal principles in arriving at its conclusion of domicile. Nor does the Court say that the Board's findings are not supported by substantial evidence. The Court merely says that domicile is a compound of fact and law, that therefore it may consider the question, and it proceeds to substitute its judgment for that of the Board of Tax Appeals.

This is the second case which the Court of Appeals has decided since the decision of this Court in the *Murphy* case, in which it has disregarded the Board's findings and made its own determination of the facts of intention and domicile. The case of *Beedy* v. *District of Columbia*[22] involved the domicile of a former member of Congress who had retired from that body on January 1, 1935. In the Fall of that year he returned to the District and commenced the practice of law therein. He continued to engage in the practice of law and reside in the District, and was so engaged and so residing during the calendar year 1939, for which year he paid a tax to the District on his income. He petitioned the Board of Tax Appeals for refund of the tax so paid, claiming that he was not domiciled in the District of Columbia on December 31, 1939. The Board held him to be domiciled in the District, and denied his claim for refund. While the Court of Appeals did not say that the Board had failed to apply the proper principles of law, or that the Board's findings were not supported by substantial evidence, it substituted its own finding of domicile for that of the Board, and in that case, just as it did in the instant case, the Court disregarded the legal principles announced by this Court in the *Murphy* case. In its decision in this and the *Beedy* case, the Court of Appeals not only gives great weight to the self-serving declarations of the litigants, and adheres to its decision in the

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[22] 75 App. D. C. 289, 126 F. (2d) 647.

Sweeney case,[23] but it has usurped the function of the Board of Tax Appeals.[24]

If the question of decedent's domicile at the time of his death had been left to a jury, as it might have been if the case had been tried in the District or Municipal Court instead of before the Board of Tax Appeals, and there was sufficient evidence to support the verdict reached, the Court of Appeals could not have, or, at least, should not have reversed the action of the trial Court.[25] The Act creating the Board of Tax Appeals for the District of Columbia provides that "The findings of fact by the Board shall have the same effect as a finding of fact by an equity court or a verdict of a jury".[26] It is the function of the Board of Tax Appeals to draw inferences, to weigh the evidence, and to declare the results.[27] The Court of Appeals is without power on review of proceedings of the Board to make any findings of fact. The function of the Court is to decide whether the correct rule of law was applied to the facts found, and whether there was substantial evidence to support the findings made.[28] The Court may not substitute its judgment of the facts for that of the Board.[29]

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[23] The opinion of the Court of Appeals in the case of *Sweeney* v. *District of Columbia*, 72 App. D. C. 30, 113 F. (2d) 25, was overruled by the decision of this Court in the *Murphy* case.

[24] In substituting its judgment regarding the conclusion of domicile for that of the Board, the Court disregards the Board's finding that decedent had no fixed and definite intent to return and take up his home at the place of his former abode. The Court could not properly hold that the Board's finding regarding intent was not supported by substantial evidence, and the Court could not properly hold that decedent had retained his former domicile when the facts showed that he had no fixed and definite intent to return and take up his home there.

[25] *Beale, Conflict of Laws*, Paragraph 15.1.

[26] 52 Stat. 371, Section 47-2404, D. C. Code, 1940.

[27] *Helvering* v. *Nat. Grocery Co.*, 304 U. S. 282; *Helvering* v. *Kehoe*, 309 U. S. 277.

[28] *Helvering* v. *Kehoe*, 309 U. S. 277;
Elmhurst Cemetery Co. v. *Commissioner*, 300 U. S. 37;
Helvering v. *Rankin*, 295 U. S. 123.

[29] See Note 27 and Note 28, above.

III

The Court of Appeals erred in holding, in effect, that a person may have a domicile within a State without fixing such domicile at a particular place therein.

The record in this case clearly shows that decedent had no fixed and definite intent to return and take up his home at Starke, Florida, the place where he was formerly domiciled. The evidence respecting the place where decedent would live if he should remove to Florida was that he would live at either St. Augustine, Jacksonville, or Starke (R. 114). In holding decedent domiciled in Florida, the Court of Appeals held, at least in effect, that a person may be domiciled within a State without fixing such domicile at any particular place therein. It is the view of the petitioner that such holding is contrary to the ordinary conception of domicile in this country, and the rule laid down by this Court in the *Murphy* case. After stating the rule that a man does not acquire a domicile in the District simply by coming here to live for an indefinite period of time while in Government service, this Court says: [30]

> "On the other hand, we hold that persons are domiciled here who live here and have no fixed and definite intent to return and make their homes where they were formerly domiciled."

In view of the further language of the opinion, and the Court's adoption of Professor Beale's view that the search for the domicile of a person capable of acquiring a domicile of choice is but a search for his "home", it seems plain that this Court intended that in order to escape District domicile a person must have a fixed and definite intent to return to the

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[30] 311 U. S. 454-455.

"home", or at least the same town, where he was formerly domiciled. The weight of authority in this country supports this rule.

Dr. Kennan in his work on *Residence and Domicile* [31] says that

> "in this country the ordinary conception of domicile is residence in a *definite, particular, place* with intent to remain there."

The following also appears in Paragraph 104 of Dr. Kennan's work:

> "But can one have a domicile within a state without having it in some particular place in the state? The weight of authority in this country and under our conditions would seem to negative the proposition and there would seem to be no hardship in requiring proof of domicile in a *state* to include a fixed abode somewhere in that state.
>
> "In the words of Chief Justice Parker: 'An inhabitant, by our constitution and laws, is one who being a citizen dwells or has his home *in some particular town*, where he has municipal rights or duties, and is subject to particular burdens.'" [32]

Conclusion

In view of the foregoing, it is respectfully submitted that the United States Court of Appeals for the District of Columbia in its decision in this case has not given proper effect to applicable decisions of this Court, that a writ of certiorari should

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[31] Paragraph 104, page 217.

[32] *Harvard College v. Gore* (1827), 5 Pick. (Mass.) 370. See other cases cited by Kennan in Note 71, page 218.

be granted, and this Court should review the decision of said Court and finally reverse said decision.

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Reprint of letter appearing at pages 45-46 of the Record from Charles F. Pace to William R. McQuaid, dated December 5, 1939 ..... 1a

Reprint of letter appearing at page 59 of the Record from Charles F. Pace to Mrs. Vida V. Morgan, dated September 16, 1939 ..... 2a

Reprint of letter appearing at page 60 of the Record from Charles F. Pace to Mrs. Vida V. Morgan, dated August 26, 1939 ..... 3a

Reprint of letter appearing at pages 69-70 of the Record from Charles F. Pace to William R. McQuaid, dated November 29, 1939 ..... 4a

COPY of letter appearing at pages 45-46 of the Record.

1851 Columbia Road,
Washington, D. C.
December 5, 1939.

Dear Will:

I thank you for your fine letter of the 2nd. You were indeed kind to explain everything to me.

I am a citizen of Florida and vote there regularly. My voting place is Starke, but have paid my income tax at Baltimore where many Federal employees here pay. Will change to Jacksonville as you suggest. My income is not large. If it were not for my salary would have to pay very little as my Florida income is almost nothing. Have a few fine mortgages in Jacksonville. The property at Starke is old and I pay more in repair bills, taxes, insurance, etc. than I get out of it. Can't sell it—just drag along from sentiment and force of habit. This is the second busiest month of the year with me. We have two big pay days before Christmas and it is rush all the time to get people satisfied. It is also settlement time for us on our accounts, therefore it will be out of the question for me to go to Jacksonville as much as I would like to. Will consider all your fine advice and reply further to you.

Thanking you again, I am

Sincerely,

s/ CHARLES F. PACE.

P. S.—Intended to reply fully to your letter but am so rushed with work. This job is almost like a term in prison—no vacation—all work.

Senator Ashurst told me yesterday he considered it the most terrible job in the Federal service. He said he would not have it for $30,000 a year.

COPY of letter appearing at page 59 of the Record.

Washington, D. C.
September 16, 1939.

Dear Mrs. Morgan:

I regret to see by The Telegraph that the funds required for the safeguarding of dear old Crosby Lake Cemetery are so slow in coming to the fine ladies who have undertaken this good work without any hope of reward for themselves other than the approval of conscience.

So many of my friends of youthful days are buried there, men and women of pure and upright character, and many of them with great mental ability, that I am impelled to add to my former contribution with this proviso: please do not let my name be published again in the paper for I have no desire whatever for display. Just let it be "from a previous contributor."

All of my dear ones, with the exception of my aunt, Mrs. Hoyt, are interred here or at Jacksonville, and I have little personal interest beyond that of paying a just tribute to the memory of the splendid men and women whom I knew and loved in my boyhood.

Yours sincerely,

/s/ CHARLES F. PACE.

(Written in left margin:)

At one time I owned all of Crosby Lake Cemetery except the lots then conveyed. I inherited it from my father and sold it for almost nothing.

COPY of letter appearing at page 60 of the Record:

Washington, D. C.
August 26, 1939.

Dear Mrs. Morgan:

I have read in the Telegraph of the need for funds for the Crosby Lake Cemetery.

As my aunt, Mrs. Hoyt, is buried there in our lot, I feel an interest in keeping up the burial ground. It is one of the sacred duties of the living to remember with respect and love those who have preceded us. Please hand the enclosed check to Miss Annie Ray, or whoever is the custodian of the funds, to be expended for this good purpose.

With kindest regards, I am

Sincerely yours,
/s/ CHARLES F. PACE.

(Envelope of the United States Senate addressed to
Mrs. Vida V. Morgan,
Starke, Florida.
Postmarked August 27, 1939, 7 P. M.)

COPY of letter appearing at pages 69-70 of the Record.

1851 Columbia Road,
Washington, D. C.,
November 29, 1939.

Mr. William R. McQuaid,
Jacksonville, Fla.

Dear Will:

Many thanks for your kind letter of good advice about the bonds.

I know The Riggs National people very well for there has not been a business day in seventy-five years that has failed to show business, sometimes very large business, between that bank and the disbursing office of the Senate.

I had quite a good personal balance there but withdrew it to send to your bank some years ago. I later drew out that money and put it with some more into the bonds now under discussion.

One of the Vice Presidents of the bank became angy about my closing the a/c and without any just cause for it was my money to do with as it seemed best to me.

I like all the officers except this V. P. but have never been inside of the bank since.

Never have been known to return to any place where insults have been heaped upon me. There is only one other such place in the world.

I know quite a few bankers here and will get one of them to handle my little matter.

Just wanted to throw a little commission to you but now see how impossible it is and how troublesome to you.

Again thanking you, I am —.

Yours truly,

/s/ CHARLES F. PACE.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 117

DISTRICT OF COLUMBIA, *Petitioner,*

v.

ELIZABETH C. PACE, *Respondent.*

SUPPLEMENTAL BRIEF ON BEHALF OF PETITIONER

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DIVISION OF PRINTING—GOVERNMENT OF THE DISTRICT OF COLUMBIA

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ELIZABETH C. PACE, *Respondent*.

SUPPLEMENTAL BRIEF ON BEHALF OF PETITIONER

The petitioner adopts its brief in support of the petition for writ of certiorari as its brief on the merits, and the following supplemental argument and authorities are submitted in support of the points urged therein:

The predominant error of the Court of Appeals is in holding that "A domiciliary determination involves a compound consideration of fact and law" and that it is "privileged to review the legal effect attached to the evidence before the Board" (R. 135), and then proceeding to consider the facts which it deems to be material and substituting its judgment for that of the Board of Tax Appeals.

It is the understanding of petitioner that this Court, in its opinion in the Murphy case,[1] definitely held that domicile is a question of fact for determination by the Board of Tax Appeals. This rule is supported by leading authorities in both England and America.

Dicey and Beale, two leading authorities in England and America on private international law, are emphatic that domicile of choice is a pure question of fact. In his comments on his definition of domicile, Dicey says: "Yet, when-

[1] 304 U. S. 441.

ever a country is termed a person's home, reference is intended to be made to a connexion between two facts, one physical, the other mental. The physical fact is the person's 'habitual physical presence', or, to use a more ordinary term, 'residence' within the limits of a particular country. The mental fact is a person's present intention to reside permanently or for an indefinite period within the limits of such country . . . it should be noted that the conception of the country as a home is in no sense a legal or technical idea since it arises from the relation between two facts, 'actual residence' and 'intention to reside' . . . the question whether a given country is or is not to be considered a particular person's home is in itself a mere question of fact and not of law." [2]

Beale is equally insistent that no question of law is involved: "The determination of a domicile of choice involves the determination of questions of fact, particularly the fact of intention, always a difficult fact to determine. The difficulty, however, it must be emphasized, is one of fact and not of law, . . ." [3]

In a recent article on "Domicil of Choice—'Fact' or 'Law'?" [4] Dr. A. Farnsworth discusses the English and American authorities which hold that the determination of domicile involves the determination of questions of fact and not of law. He concludes that "since an analysis of the two elements constituting domicil of choice shows that both are purely factual, any questions arising on it must equally be pure matters of fact so long as correct legal principles are applied."

The state of a man's mind, his animus or intention, is surely just as much a matter of fact as anything physical; Bowen, L. J., in *Edgington* v. *Fitzmaurice* (1885), 29 Ch. D. 483, said: "The state of a man's mind is just as much a matter of fact as the state of his digestion. It is true that it is very difficult

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[2] Dicey, Conflict of Laws, Ed. 5, pp. 66 and 68.

[3] Beale, Conflict of Laws, Sec. 15.1. He concludes: "If, therefore, the question of acquisition in fact of a domicile of choice has been left to a jury and there is sufficient evidence to support the verdict reached, and the Court grants a new trial, a higher Court cannot reverse the action in the trial Court." (Vol. 1, p. 132.)

[4] The Law Quarterly Review, July, 1943, Vol. 59, No. 235, p. 219.

prove what the state of a man's mind is, but if it can be ascertained it is as much a matter of fact as anything else."

In the instant case, it is undisputed that the decedent, Charles F. Pace, lived in the District of Columbia at the time of his death and for 27 years prior thereto. The Board of Tax Appeals found that at the time of his death he had no fixed and definite intent to return and make his home where he was formerly domiciled (R. 3). The Board held decedent to be domiciled in the District at the time of his death (R. 4). The function of the Court of Appeals on review is to decide whether the correct rule of law was applied to the facts so found and whether there was substantial evidence before the Board to support such findings.[5]

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[5] Section 4(a) of the Act creating the Board of Tax Appeals for the District of Columbia provides that decisions of the Board may be reviewed by the Court of Appeals, and that "Upon such review the Court shall have the power to affirm, or *if the decision of the Board is not in accordance with law*, to modify or reverse the decision of the Board, with or without remanding the case for hearing, as justice may require." 52 Stat. 371, Sec. 47-2404, D. C. Code, 1940. (Italics supplied.)

See also: Cases cited in Note 28, page 30 of petitioner's brief in support of petition for certiorari; *Wilmington Co.* v. *Helvering*, 316 U. S. 164, 168; *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U. S. 206, 208; *Federal Trade Commission* v. *Standard Education Society*, 302 U. S. 112, 117.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. ——.

DISTRICT OF COLUMBIA, *Petitioner*,

v.

ELIZABETH C. PACE, *Respondent*.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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IN THE

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

OPINIONS BELOW.

The opinion of the Board of Tax Appeals for the District of Columbia (R. 2-4) is not reported. The opinion of the United States Court of Appeals for the District of Columbia (R. 131-136) is not yet reported in the official reports, *Pace v. District of Columbia*, —— App. D. C. ——, 135 F. (2d) 249.

JURISDICTION.

The ground for denial of this Court's jurisdiction sought to be invoked is that the Court below has given proper effect to an applicable decision of this Court, and, therefore, this Court should not further consider the question involved.

STATEMENT OF THE CASE.

The sole question presented in this case is the domicile of Charles F. Pace at the time of his death on March 20, 1940.

Said decedent came to the District of Columbia in 1913 to accept a position as an employee of the Federal Government (R. 111), not under civil service (R. 112), and continued as an employee of the Federal Government, not under civil service, until the date of his death, his employment requiring his presence in the District of Columbia (R. 112). His first position was in the Library of Congress, followed by positions in the Post Office of the Capitol, and in the Disbursing Office of the Senate (R. 112). From about 1916 until his death he occupied the post of Financial Clerk of the Senate (R. 112, 123).

In order to accept a more lucrative post in the Federal establishment (R. 123) he gave up his employment in a bank at Jacksonville, Florida (R. 111), and stored his household furnishings in a warehouse owned by himself in Starke, Florida (R. 116). About the same time he sold the old family home which he owned in Starke, Florida (R. 121).

Decedent was a single man (R. 103, 126) and, while sojourning in the District of Columbia, lived with his sisters, either in boarding houses or rented apartments (R. 121, 123) and, although his said sisters, one of whom is Respondent, and his brother frequently urged that he purchase a home in the District, he emphatically rejected all such urgings (R. 113, 114, 124).

Prior to his going to the District to enter Federal employment, decedent was the owner of valuable real estate in Starke, Florida, (R. 122) and subsequently he increased his real estate and mortgage holdings in Bradford, Clay and Duval Counties, Florida (R. 116, 122), until at the time of his death he owned real estate in said three counties valued at $30,294.82 (R. 81-84), and held mortgages on real estate in Clay and Duval Counties, Florida, valued at approximately $27,000.00 (R. 85-92), with a deposit in The Atlantic National Bank of Jacksonville of $8,416.79 (R. 92). On the other hand, he had with him in the District of Columbia only intangibles and a comparatively small bank account (R. 92-94). In addition, he had interest in three joint accounts with Respondent in District financial institutions (R. 21) the subject matter of this litigation.

During all his sojourn in the District, from 1913 until his death, decedent maintained his voting franchise at Starke, Florida, by registration and payment of poll taxes, and by regular voting in the primaries and general elections there (R. 47-56, 109, 112-114), and actively participating in political campaigns there (R. 113).

Decedent was a member of the Roman Catholic Church (R. 123), which neither requires nor permits membership, as such, in an individual local parish church, but *requires* attendance upon its services wherever such member may find himself on Sundays and Holy Days of Obligation.

Decedent was a valued employee of the United States Senate and maintained a sturdy loyalty to that body, which frequently constrained him to continue at his post when his true desire was to retire to his home in Florida (R. 112, 115, 125).

During all his sojourn in the District, decedent maintained lively contacts with his home town and state by correspondence (R. 41-45, 55-61, 66-74, 109, 113, 115, 119), newspaper subscriptions (R. 63, 109, 115) and contributions to worthy causes there (R. 56-61, 109). On the other hand, except for contributions to the Washington Community

Chest, considered a duty, he had no interest in the place of his sojourn (R. 115). He was there only because his work required him to be there.

STATUTES INVOLVED.

Section 4 (a) of Title IX of Chapter 223, 75th Congress—An Act to amend the District of Columbia Revenue Act of 1937, provides:

> "The decision of the Board may be reviewed by the Court (United States Court of Appeals for the District of Columbia) as hereinafter provided if a petition for such review is filed by either the District or the taxpayer within 30 days after the decision is rendered. Such petition for review shall be filed with the Board, and shall be in such form as the Board by regulation shall provide. Upon such review the Court shall have the power to affirm, or if the decision of the Board is not in accordance with law, to modify or reverse the decision of the Board, with or without remanding the case for hearing, as justice may require. . . ."

Section 1, Article 1, Title V, of the District of Columbia Revenue Act of 1937, provides, in material part as follows:

> "Taxes shall be imposed in relation to estates of decedents, the shares of beneficiaries of such estates, and gifts as hereinafter provided:
>
> "(a) All real property and tangible and intangible personal property, or any interest therein, having its taxable situs in the District of Columbia, transferred from any person who may die seized or possessed thereof, either by will or by law, or by right of survivorship, and all such property, or interest therein, transferred by deed, grant, bargain, gift, or sale (except in cases of a bona fide purchase for full consideration in money or money's worth), made or intended to take effect in possession or enjoyment after the death of the decedent, or made in contemplation of death, to or for the use of, in trust or otherwise (including property of which the decedent has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end

before his death (1) the possession or enjoyment of, or the right to the income from such property or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom), to the . . . brothers and sisters of the whole or half blood of the decedent shall be subject to a tax as follows: 3 per centum of so much of said property as is in excess of $2,000 and not in excess of $25,000; 4 per centum of so much of said property as is in excess of $25,000 and not in excess of $50,000; 6 per centum of so much of said property as is in excess of $50,000 and not in excess of $100,000; 8 per centum of so much of said property as is in excess of $100,000 and not in excess of $500,000; 10 per centum of so much of said property as is in excess of $500,000."

Section 2 of said Article and Title provides as follows:

"The tax provided in section 1 shall be paid on the market value of the property or interest therein at the time of the death of the decedent as appraised by the assessor or, in the discretion of the assessor, upon the value as appraised by the probate court of the District. The taxable portion of real or personal property held jointly or by the entireties shall be determined by dividing the value of the entire property by the number of persons in whose joint names it was held."

SUMMARY OF ARGUMENT.

The Court of Appeals did not err in reversing and remanding the cause to the Board of Tax Appeals, such remand leaving the Board free to reach a decision on the facts before it in accordance with the principles of law as announced by this Court.

The Court of Appeals did not, in effect, hold that a person may have a domicile within a state without fixing such domicile at a particular place therein.

The facts in this case clearly show that decedent intended to and did maintain his domicile of origin in the State of Florida, as laid down in this Court's decision in *District of Columbia* v. *Murphy*, 314 U. S. 441, 62 S. Ct. 303.

ARGUMENT.

At the hearing before the Board of Tax Appeals it was conceded by counsel for both parties that

> "if it is found that Mr. Pace, the decedent, was domiciled in Florida there is no tax due and if he was domiciled in the District the tax is valid." (R. 109)

As stated by Petitioner in the opening statement in its brief as respondent in the Court below:

> "The *sole* question presented in this appeal is the domicile of Charles F. Pace at the time of his death on March 20, 1940."

The Petition now before the Court presents as its question #3:

> "Whether decedent, Charles F. Pace, was domiciled in the District of Columbia for purposes of inheritance taxation at the time of his death,"

and states that

> "The importance of the question is not limited to liability for payment of taxes, but extends to matters relating to the administration of estates, the granting of divorces, and the like."

However the Court below, in its opening statement says:

> "The *sole* issue we are called upon to determine, in reviewing the decision of the Board of Tax Appeals in this case, is whether Charles F. Pace was, at the time of his death, legally domiciled in Florida or in the District of Columbia." (Pace v. District of Columbia, ... App. D. C. ...., 135 F. (2d), 249.

In view of such statement, we seriously question that this Court will permit itself to consider matters collateral to the issue, regardless of how important such matters seem. Hence, Respondent assumes for the purpose of this brief, that the Court will consider only the issue of the domicile of the decedent for inheritance tax purposes and no other.

Addressing ourselves now to Petitioner's argument, we would respectfully bring to the Court's consideration Respondent's construction of this controversy, as gleaned from the record.

A.

We shall first consider question # 1, appearing on Page 4 of Petitioner's brief, being Chapter II of Petitioner's Argument (Petitioner's brief, page 27), the latter bearing the following caption:

> "The Court of Appeals erred in substituting its judgment for that of the Board of Tax Appeals when the Board's findings were made in accordance with the principles of law announced by this Court and are supported by substantial evidence."

Section 4 (a) of Title IX of Chapter 223, 75th Congress—An Act to Amend the District of Columbia Revenue Act of 1937, provides:

> "The decision of the Board may be reviewed by the Court (United States Court of Appeals for the District of Columbia) as hereinafter provided if a petition for such review is filed by either the District or the taxpayer within 30 days after the decision is rendered. Such petition for review shall be filed with the Board, and shall be in such form as the Board by regulation shall provide. Upon such review the Court shall have the power to affirm, or if the decision of the Board is not in accordance with law, to modify or reverse the decision of the Board, with or without remanding the case for hearing, as justice may require . . ."

The Court necessarily, in its review of the decision, must consider whether the Board has reached its decision based upon the facts by the application of the proper legal principles. The crux of this case is

> "Did the Board apply the proper legal principles announced by this Court in the Murphy case (District of Columbia v. Murphy, 314 U. S. 441, 62 S. Ct. 303) to the facts before it in this case?"

The Court below, in a carefully reasoned opinion, which thoroughly reviewed the evidence before the Board, reached the opinion

> "... that the record discloses that the Board erroneously concluded on re-hearing that the decedent had failed to overcome the presumption, arising from his 'living' in the District, that he was domiciled therein. The Petitioner (Respondent herein) amply sustained the requisite burden of proof that the decedent maintained his domicile in Florida. We expressly bottom our conclusion upon the opinion of the Supreme Court in District of Columbia v. Murphy."

Certainly if the Court finds that the Board's decision

> "... is not in accordance with law"

it is its solemn duty to reverse and remand the case to the Board, that it may reach a proper decision upon a re-examination of the facts before it by the application of the proper legal principles. The Court's failure to do so would be a denial of simple justice.

It is not for Respondent to justify the Court's decision in the Beedy case (*Beedy* v. *District of Columbia*, 73 App. D. C. 289, 126 Fed. 2d 647). The decision now before the Court squares in every respect with the holding in the Murphy case and there is, therefore, no justification for review under this Court's Rule 38 (5) (c).

Respondent, therefore, respectfully submits that the Court of Appeals did not err in reversing and remanding the cause to the Board of Tax Appeals, such remand leaving the Board free to reach a decision on the facts before it, in accordance with the principles of law as announced by this Court.

B.

We next consider question No. 2, appearing on page 4 of Petitioner's brief, being Chapter III of Petitioner's Argument (Petitioner's brief, page 31), the argument being captioned as follows:

> "The Court of Appeals erred in holding, in effect, that a person may have a domicile within a state without fixing such domicile at a particular place therein."

In the case of *Harvard College* v. *Gore* (1827) 5 Pick. (Mass.) 370, it is said

> "An inhabitant, by our Constitution and laws, is one who being a citizen dwells or has his home in some particular town, where he has municipal rights or duties, and is subject to particular burdens."

This Court, in the Murphy case (supra), holds that

> ". . . Congress did not intend that one living here (District of Columbia) indefinitely while in the Government service be held domiciled here simply because he does not maintain a domestic establishment at the place he hails from. Such a rule would result in taxing those unable to maintain two establishments, and exempting those able to meet such burden . . ."

The only possible reference in the record to decedent's claiming residence in the State of Florida, other than in the Town of Starke, is found in a single question addressed to the Respondent and the answer thereto.

> "Did you ever discuss where you would live in Florida?
>
> "Yes, he said St. Augustine or Jacksonville or Starke. He asked me which I would like and I told him it didn't make any difference to me." (R. 114, 115)

Against that, we find overwhelming evidence of decedent's maintenance, during all of said period, of residence in Starke, and the most that can be said for the testimony quoted is that Respondent had a choice of three places, to be decided at a later date, but it did not in any way bind decedent to renounced his own place of domicile. Furthermore, may we respectfully point out to the Court that all three places described, viz: Starke, Jacksonville and St. Augustine, are within fifty miles of each other, and are

comprehended within the metropolitan area of the City of Jacksonville, where the record shows (R. 111) decedent was employed before assuming his Federal post. In the light of the language of this Court's opinion in *District of Columbia* v. *Murphy* (*supra*), it would not appear necessary that one would be required meticulously to point out the address of a place of abode upon retirement, so long as, without change of his domiciliary intent, he returns to the immediate vicinity of the domicile which he enjoyed at the time of his entry upon Federal service. Respondent, therefore, respectfully submits that the Court of Appeals did not, in effect, hold that a person may have a domicile within a state without fixing such domicile at a particular place therein.

C.

We next consider question No. 3, appearing on page 4 of Petitioner's brief, being Chapter I of Petitioner's Argument (Petitioner's brief, page 13), captioned as follows:

> "Decedent, Charles F. Pace, was domiciled in the District of Columbia at the time of his death on March 20, 1940."

Respondent would respectfully point out to the Court that the decedent, Charles F. Pace, was not domiciled in the District of Columbia at the time of his death on March 20, 1940, and will discuss this matter under the same chapter sub-headings as used by Petitioner in its brief.

(a) Reasons for coming to the District of Columbia and manner of living therein (Petitioner's brief, page 14).

It is shown by the Record (R. 111) that decedent in 1913 was, and had been for some time a close friend of the late United States Senator, Duncan U. Fletcher, and that Senator Fletcher had expressed himself as being desirous of having decedent accept a position at the Capitol, which would require decedent to give up the position he held then

in a bank in Jacksonville, and in view of the fact that the brother and two sisters of decedent were then in Washington and decedent "was not making enough" in the Jacksonville bank "to take care of" his sisters, and the salary attached to the Federal post would be sufficient for that need (R. 124), decedent was pursuaded to accept the Federal post.

The record further shows (R. 112) that decedent from that time forward continued to hold positions of trust in the Federal establishment, not under civil service, continuously, from 1913 until his death, that the nature of his work, and his devotion to it (R. 114) kept him closely in Washington almost continuously. While it is true that the family home in Starke, Florida, was sold at about the time decedent accepted the Federal position (R. 121), it is to be noted that other members of the family—the brother and sisters—had before that year gone to Washington (R. 120), the brother by reason of his office in the Catholic University (R. 114, 124) and the sisters for the purpose of studying (R. 111, 120). It is further to be noted that the home was sold because

> "It was such a large place we didn't care to keep up such a large place. . . ." (R. 121)

a procedure specifically approved in this Court's decision in *District of Columbia* v. *Murphy* (*supra*; text, page 454 of 314 U. S.) and

> ". . . there were so many dear associations there that we did not want to go back in that house." (R. 121)

Obviously, the latter statement refers to the fact that the family had been broken by the death of the parents, a most natural feeling.

The record further shows that the decedent, during all his sojourn in Washington, lived in boarding houses or rented apartments (R. 113), and on frequent occasions refused to purchase a home there, or even to consider such

a purchase (R. 113, 114, 124), taking the position always that he proposed to return to Florida at the conclusion of his work for the Government (R. 114, 115, 116, 117, 119, 124, 125). It is shown by the record that decedent declined to permit his name to be considered for the office of Comptroller General—a fifteen year term—because he was not going to make Washington his home (R. 115).

(b) Relations to former place of abode (Petitioner's brief, page 15):

On the other hand, the record shows decedent to have maintained his registration and to have at all times voted in Starke, Florida, up to the time of his death (R. 47-56, 112, 113) and to have actively participated in political campaigns there (R. 113). While it is possibly true that his campaign interest was limited to the political fortunes of the two Florida Senators—Fletcher and Trammell—it is also true that he owed his position solely to the patronage of these two senators (R. 111-113). Petitioner has cited in its brief (page 15) decedent's activity in behalf of his home town—a village of less than 1500 (1940 census) and the record shows that he had no interest whatsoever in the City of Washington during his sojourn there (R. 115). Petitioner's statement in its brief (page 16) as to decedent's property holdings, is substantially correct, and we believe the Court could well take judicial notice that the personal property stored in Starke (R. 116), since 1913, would have no intrinsic value in 1940, though much sentimental value could and did attach thereto.

The record is barren as to decedent's membership in fraternal organizations, either in Washington or in Starke. The record shows that decedent was a member of the Roman Catholic Church (R. 123). It is a fact that membership in such church carries with it the definite obligation that the member regularly attend church (Mass) on every Sunday and Holy Day of Obligation regardless of where he may find himself at the time. In other words, the inflexible rule

of the Roman Catholic Church required decedent to attend Mass regularly in Florida when he was physically present there and when he sojourned in the District of Columbia or any other place the same inflexible rule required his attendance at Mass at a church in the locality where he found himself. In other words, decedent was a member of the *Roman Catholic Church*, and not a member of a local parish church in the same sense as membership in an individual local Protestant church implies.

As for his subscription to Florida newspapers (R. 63, 115) and his correspondence with friends in Florida (R. 41-45, 55-61, 66-74, 113, 115, 119), inasmuch as all his interests, as shown by the record, whether cultural, friendly or financial, were entwined with his home town and state, it was the natural thing for him to show that interest in the way he did. He certainly felt no sense of civic responsibility and had no interest in the place of his sojourn, Washington (R. 115), and, in fact, he seemed to disparage it (R. 114). Only his sense of duty to his post held him (R. 120, 125), although his real desire was to be in Florida (R. 113-117, 119, 124, 125), his home.

(c) Property and investments (Petitioner's brief, page 17).

The Record shows the nature of decedent's investments (R. 82-94) and it is to be noted that all his tangible and much of his intangible property (R. 81-94) was in Florida. The only property he had in the District of Columbia was stocks and bonds (R. 92, 93) which a person normally keeps near his person, for obvious reasons.

(d) Payment of taxes (Petitioner's brief, page 19).

Respondent admits that decedent paid some income taxes to the District of Columbia, but this was paid on the advice of one in whom he had confidence insofar as the interpretation of the income tax laws of the District of Columbia was concerned. While it is true that decedent was admitted

to the practice of law in Florida (R. 72), it is also true that he had not practised law since long prior to 1913, as he left the employ of a bank that year to enter Federal service (R. 111). Since the intangible and income tax laws of the District of Columbia were of somewhat recent enactment, decedent had had no more opportunity than the ordinary layman in the District of Columbia to be familiar with them, and naturally relied, as do many others, upon his banker (in this instance a tax expert, (R. 118)) for advice thereon. The payment of taxes by the decedent on the estate of his deceased sister Mary and by the Respondent to the Petitioner should have no bearing upon the question now before the Court, since decedent's sisters were residents of the District of Columbia (R. 117, 118).

(e) Transmission of will to Florida (Petitioner's brief, page 21)

Petitioner in its brief (pages 21, 22) overlooks the fact that the District Court, in determining the domicile of decedent, had before it in affidavit form much of the evidence that was later submitted to and considered by the Board of Tax Appeals (R. 40-65), as witness the certificate of the Registrar of Wills thereon (R. 65).

(f) Statements respecting domicile and intention to return to place of former abode. (Petitioner's brief, page 22)

While it is true that decedent's last will and testament began

> "I, Charles F. Pace, of the City of Washington, District of Columbia . . ."

such a statement is not conclusive as to domicile and is only an element to consider (*Wilberding* v. *Miller*, 88 Ohio St. 609, 90 Ohio St. 28, 106 N. E. 665, L. R. A. 1916A, 718, 726; *Ennis* v. *Smith*, 14 How. (U. S.) 400, 14 L. ed. 472, 483; 17 Amer. Jur. 643 (Domicil Sec. 91).

All of decedent's correspondence with people in Florida exhibited in the Record (R. 45, 59, 60, 69) demonstrates his steadfast intention to maintain his domicile in Florida. And, while not conclusive, the fact that, in the years prior to the enactment of the absentee voting law in Florida, he took the time to journey to Starke for the purpose of participating in the elections there (R. 47, 55, 113) and, later, upon the enactment of the absentee voting law in the state, he consistently exercised his right of franchise (R. 40, 47, 56, 112) by the casting of an absentee ballot, certainly is highly persuasive.

Respondent would further point out that Florida was decedent's

"domicile of origin"

and that the Record abundantly shows that nothing took place at any time during his life to change that domicile to the District, for, as this Court has well said

> ". . . a man does not acquire a domicile in the District simply by coming here to live for an indefinite period of time while in the Government Service." (District of Columbia v. Murphy, supra.)

(g) Domicile in the District of Columbia (Petitioner's brief, page 25).

Respondent has hereinabove discussed the payment by decedent of taxes to the District of Columbia and his reasons therefor. The true reasons for his going to the District have also been discussed. While it is true that he probably had a substantial estate at the time he declined the position offered him by the Jacksonville bank (R. 125), that estate was largely amassed subsequent to 1913 (R. 123), and also he felt a sense of responsibility to the Senate (R. 114, 119, 124, 125). In the light of the testimony, the residence of other members of decedent's family should have no weight.

As for Petitioner's argument (Petitioner's brief, page 26) relative to interrment, Respondent was most clear as to decedent's final resting place

"in the family lot"

in Jacksonville (R. 117).

Respondent, therefore, respectfully submits that she has squarely met all of the requirements to establish decedent's unwavering intention to maintain his domicile of origin in the State of Florida, as laid down in this Court's decision in District of Columbia v. Murphy (supra) and the lower Court so found (*Pace v. District of Columbia, supra*).

CONCLUSION.

In view of the foregoing, Respondent respectfully submits that this cause presents no such matter as to require review by this Honorable Court, and, therefore, the Writ of Certiorari sought by the Petitioner herein should be denied.

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taining a home in the District, that he was domiciled therein, and reversed its former ruling.

The Court of Appeals for the District of Columbia reversed. It accepted and applied our decision in *District of Columbia* v. *Murphy* and, weighing the facts in the light of its principles, concluded that the decedent was domiciled in Florida at the time of his death. The evidence before the Board of Tax Appeals took a wide range, and we do not think it is necessary to recite it in detail. As is usual in cases of contested domicile, it gave rise to conflicting inferences, and a decision either way would be supported by substantial evidence. Whether the Board's determination or that of the Court of Appeals should be deemed correct would depend upon the weight to be given to many different items of evidence, the credibility to be given to testimony, and the inferences to be drawn from many admitted events. We did not take this case to determine where Mr. Pace was domiciled. But the scope of review of decisions by the Board of Tax Appeals of the District of Columbia is important to the administration of the District's tax laws, and since that question was not reached or decided in *District of Columbia* v. *Murphy*, we granted certiorari in this case.

Congress has seen fit in certain of the District's tax statutes to make liability dependent upon domicile. In the District, where a large proportion of the population owe their presence to Government service and have the strongest motives for retaining their political connections with and domicile in the enfranchised community from which they came, this test of taxability is bound to give rise to innumerable and difficult conflicts. These the Board of Tax Appeals is authorized in the first instance to resolve.

The provisions for review of Board of Tax Appeals decisions present complexities almost as baffling as the test of taxability itself. Section 4 (a) of the Act creating the Board of Tax Appeals for the District of Columbia provides that its decisions may be reviewed by the Court of Appeals and that upon such review the court "shall have the power to affirm, or if the decision of the Board is not in accordance with law, to modify or reverse the decision of the Board, with or without remanding the case for hearing, as justice may require." 52 Stat. 371; D. C. Code (1940 § 47-2404 (a)). Had this been all, a strong case would be made for applying the rule of finality applicable to the Federal Board of Tax Appeals, now the Tax Court of the United States. *Dobson* v.

Commissioner, No. 44, this Term, decided December 20, 1943. However, the same organic act contains another and qualifying provision that is not to be found in the acts creating the Tax Court: "The findings of fact by the Board shall have the same effect as a finding of fact by an equity court or a verdict of a jury." 52 Stat. 371, D. C. Code (1940) § 47-2404(a). Since findings of fact by an equity court and the verdict of a jury have from time immemorial been subject to different rules of finality it is puzzling to know what the draftsmen of this section meant by including both in the one rule for reviewing Board of Tax Appeals findings.

This statute was enacted in May, 1938. The law at that time as to the review of findings of fact in equity was, as stated by Mr. Justice Brandeis for the Court, "in equity, matters of fact as well as of law are reviewable . . . ." *Virginian Railway Co.* v. *United States*, 272 U. S. 658, 675. Findings of fact by the trial judge of course were presumptively correct and were accepted by reviewing courts unless clearly wrong. *Butte & Superior Copper Co.* v. *Clark-Montana Realty Co.*, 249 U. S. 12, 30. This rule, however, did not deny power to the Circuit Court of Appeals to review facts, but rather went to the weight to be accorded to the findings of a lower court and had special pertinence where credibility of witnesses was involved. This Court had a well settled rule that "when two courts have reached the same conclusion on a question of fact, their finding will not be disturbed unless it is clear that their conclusion was erroneous." *Baxter* v. *Schofield*, 243 U. S. 114, 118. Such a rule would have no support in reason if the second court could not make its findings as a result of its own judgment.

The statute therefore authorizes review of findings of fact of the Board of Tax Appeals of the District of Columbia, subject to the admonition that they are to be undisturbed unless clearly wrong, if the findings are given the effect of findings of fact by an equity court. If the effect of the jury verdict, provided for in the same sentence, is to prevail, the review is much more restricted. The question as to which of the inconsistent provisions shall govern arises in a local statute confined in its operation to the District of Columbia. "We will not ordinarily review decisions of the United States Court of Appeals, which are based upon statutes so limited or which declare the common law of

the District." *Del Vecchio* v. *Bowers*, 296 U. S. 280, 285. Cf. *American Security & Trust Co.* v. *District of Columbia*, 224 U. S. 491; *United Surety Co.* v. *American Fruit Product Co.*, 238 U. S. 140. Where a local statute contains a conflict on its face as patent and as irreconcilable as this, where either choice seems equally supportable, we cannot say that the Court of Appeals commits error in assuming its review of the Board of Tax Appeals decision to be entitled to the scope of a review of an equity court.

After the Board of Tax Appeals statute, Federal Rule of Civil Procedure No. 52 was adopted, effective September 1, 1938. It provided as to all actions tried upon the facts without a jury: "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses." This general rule, even if it were thought to modify the previous rule as to review of findings of fact in equity cases, would hardly supersede a special statutory measure of review applicable to a special and local tribunal.

We conclude, therefore, that the Court of Appeals has power to review decisions of the Board of Tax Appeals as under the equity practice in which the whole case, both facts and law, is open for consideration in the appellate court, subject to the long-standing rule that findings of fact are treated as presumptively correct and are accepted unless clearly wrong. The Court of Appeals therefore had power to set aside the determination of the Board of Tax Appeals if convinced, as it was, that the Board was clearly wrong. We are not called upon to separate factual from legal grounds of decision and to determine if reversal of the Board of Tax Appeals by the Court of Appeals could stand on questions of law alone. The judgment therefore is

Affirmed.

Mr. Justice BLACK and Mr. Justice RUTLEDGE took no part in the consideration or decision of this case.